Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No._____

IN THE

Supreme Court of the United States

TROY SCHWIEGERATH,
Petitioner,

v.

THE EIGHTEENTH JUDICIAL DISTRICT, the District,
THE DISTRICT COURT OF DOUGLAS COUNTY, the Court,
BETH-ELLIOTT DUMMLER, the Magistrate,
CHERYL LANE, the Clerk of the Court,
ELIZABETH HOLMAN, the Special Advocate,
and, MARY MULLARKEY, the Chief Judicial Administrator,
Respondents.

On Petition for Writ of Certiorari To The Colorado Supreme Court

PETITION FOR WRIT OF CERTIORARI

Petitioner: *Pro Se*
TROY SCHWIEGERATH,
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INTRODUCTION

In January of 2001, a committee commissioned by the Chief Justice of the Colorado Judicial Branch resolved to subordinate due process protections afforded by Colorado child and family law, policy, practice and procedure. The Colorado Judicial Branch continues to administer changes accordingly. In an original action in the Colorado Supreme Court, the Petitioner identified some of the harmful consequences of these changes.

QUESTIONS PRESENTED

Whether state judicial officers may require litigants to pay private agencies to perform public judicial functions?

Whether litigants ordered to pay private firms to perform judicial functions have a right to the underlying data acquired?

May a state judicial district and its subdivisions restrict a *pro se* litigant's filing access because of the content of his pleadings?

Whether a minimal constitutional standard must be met before permanent orders affecting children are re-opened for adjudication?

Where legal proceedings implicate fundamental rights, is a state court required ensure that parties receive constitutional notice?

PARTIES TO THE PROCEEDINGS

All named Respondents to the original action decided In the

Colorado Supreme Court are included in the caption for this Petition.

Petitioner: The Petitioner is a *pro se* party to proceedings in which he challenged the constitutionality of Colorado child and family law, policy, and procedure.

Troy Schwiegerath, as the *pro se* Petitioner.

Respondents: The Respondents have varying roles in the creation, implementation, and administration of child and family law, policies, and procedure in the Colorado State Judicial Branch.

Mary Mullarkey, as the Chief Justice of the Colorado Supreme Court and the Chief Judicial Administrator for the Colorado Judicial Branch. Magistrate **Beth Elliott-Dummler**, as the presiding Magistrate in the District Court for the County of Douglas. **Cheryl Lane**, as the Clerk of the District Court for the County of Douglas. **Elizabeth Hollman**, as the Special Advocate or court appointee. The **Eighteenth Judicial District**, as a judicial division of the State of Colorado.

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Morrison v. Lipscomb, 877 F.2d 463 (6th Cir. 1989).
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Quinn v. *Syracuse Model Neighborhood Corp.*, 613 F.2d 438

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Boddie v. *Connecticut*, 401 U. S. 371, 379 (1971).
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Bush v. Gore, 531 U.S. 98 (2000).
M.L.B. v. S.L.J., 519 U.S. 102 (1996)
Michetti Pipe Stringing, Inc. v. Murphy Bros., Inc., 526 US 344 (1999).

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Chambers v. *Mississippi*, 410 U.S. 284 (1973).
Dutton v. *Evans*, 400 U.S. 74 (1970).

STATUTES

28 U.S.C. § 1257
State courts; certiorari
(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question

or where the validity of a statute of any State is drawn in question on

the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

C.R.S. § 14-10-116 (*See* Appendix)

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CONSTITUTION

Article III cl. 2

JURISDICTIONAL STATEMENT

Jurisdiction is conferred to this Court by Article III cl. 2 of the United States Constitution. The Petitioner Invokes 28 U.S.C. § 1257(a) as the basis to request this Court's review. The Colorado Supreme Court dismissed the Petitioner's action summarily and without opinion on May 26th, 2005. The Colorado Supreme Court is the highest state court in which a decision could be had for the Petitioner. The Colorado Supreme Court denied the Petition for Rehearing

on May 26th, 2005. This Petition is timely filed within ninety days of the dismissal. *See* Sup. Ct. R. 13. This Petition is submitted in accordance with the standards for review enumerated by this Court. *See* Sup. Ct. R. 10(b) and 10(c). This Court is entrusted with supervisory power over all inferior judicial officers and tribunals as established by Article III cl. 2 of the United States Constitution. Inferior judicial officers must uphold the United States Constitution. This Court's supervisory powers are separable from and collateral to appellate and original jurisdiction.

HOW THE FEDERAL QUESTIONS WERE RAISED AND PASSED UPON

The Petitioner's permanent orders on the dissolution of his former marriage were decided on October 19, 2002. The trial court[1] re-opened permanent orders without cause. The Petitioner questioned the constitutionality of the trial court's action. The trial court retaliated against the Petitioner.

The child and family laws, customs, practices and procedures, promulgated primarily by the Chief Justice[2], are designed to perpetuate ongoing litigation. The trial court entered an order on a pleading that the Petitioner was not served with. (Pet. App. 5-A to 12-A; 15-A to 19-A; 22-A to 27-A). The Magistrate[3], through the *Multi-Door Court Services Office* pilot program, required the Petitioner to re-litigate permanent orders. (Pet. App. 5-A to 12-a; 33-A to 36-A). This pilot program originated in the judicial district

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[1] Magistrate Beth Elliott-Dummler of the Douglas County District Court in Eighteenth Judicial District of the Colorado Judicial Branch of the Colorado State Government.

[2] Mary Mullarkey

[3] *Id.*

in which the trial court is located. (Pet. App. 189-A to 217-A). The trial court ordered the Petitioner to mediate for a fee charged through the pilot program. (Pet. App. 189-A to 217-A). In addition, the trial court ordered the Petitioner to retain and compensate a private third party to whom judicial functions are assigned[4]. (Pet. App. 28-A to 32-A). Private third parties are commonly selected to perform judicial functions pursuant to Colorado's unconstitutional child and family law, policies, practices and procedures. (Pet. App. 103-A to 188-A).

The Petitioner had questioned the constitutionality of Colorado law, custom, policy, practices or procedure in the trial court[5]. (Pet. App. 22-A to 27-A). Thereafter, the trial court denied the Petitioner his right to notice of the proceedings, his right to equal protection under the law, and his right to confront the Special Advocate as a witness[6]. (Pet. App. 28-A to 32-A). The trial court continues to retaliate.

On May 3, 2005 the trial court ordered that no due process violation had occurred. (Pet. App. 28-A to 32-A). The Magistrate entered an order permanently enjoining the Petitioner from filing pleadings in accordance applicable Colorado statutes. (Pet. App. 15-A to 19-A; 28-A to 32-A; 40-A to 42-A).

The Petitioner instituted this original proceeding in the Colorado Supreme Court to redress, in part, the immediate

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[4] The Petitioner was ordered to retain Elizabeth Hollman of Katz & Loizeaux Forensic Services, L.L.C. to serve as a "Special Advocate." The term "Special Advocate" was replaced with "Family Court Investigator" by recently enacted legislation.

[5] Magistrate Beth Ellott-Dummler and the District Court of Douglas County in the State of Colorado.

[6] The third party is Elizabeth Hollman of Katz & Loizeaux Forensic Services, L.L.C. who served as a "Special Advocate."

and irreparable harm caused by the trial court. (Pet. App. 15-A to 19-A). The Colorado Supreme Court failed to protect the Petitioner's first amendment rights and dismissed this proceeding summarily and without opinion, on Petition for Rehearing, on May 26, 2005. (Pet. App. 1-A to 4-A).

CONSTITUTIONAL PROVISIONS

Amendment I, of the United States Constitution in relevant part:

Congress shall make no law abridging the right of

the people to petition the Government for a redress of grievances.

Amendment V, of the United States Constitution in relevant part:

No person shall be deprived of life, liberty, or property, without due process of law.

Amendment VI, of the United States Constitution in relevant part:

No person shall be deprived of life, liberty, or property, without due process of law.

Amendment XIV, Section 1, of the United States Constitution provides in relevant part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MATERIAL FACTS

The Colorado Supreme court denied the Petitioner's request for an order to show cause why the Chief Justice[7] should not require the trial court[8], the Magistrate[9], the Clerk[10], and the District[11] to accept the *pro se* pleadings in accordance with applicable law. (Pet. App. 1-A to 4-A). The order issued by the trial court[12] violated his first amendment rights and that right of equal access to the Colorado Courts.[13] (Pet. App. 5-A to 12-A). The Chief Justice of the Colorado Judicial Branch is responsible for the administration of Colorado child and family law, policy, practice and procedure. (Pet. App. 103-A to 188-A).

The Chief Justice presided over the *en banc* decision to deny the Petitioner's requests for relief from the trial court's denial of access[14]. (Pet. App. 1-A to 4-A). The result

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[7] Chief Justice Mary Mullarkey

[8] *Id.*

[9] Magistrate Beth Elliott-Dummler

[10] Cheryl Lane is the Clerk of the Douglas County Combined Courts.

[11] The Eighteenth Judicial District of the Colorado Judicial Branch.

[12] Magistrate Beth Elliott-Dummler of the Douglas County Combined Courts.

[13] Colorado Rule of Civil Procedure 121 § 1-25 permits filing via facsimile in the Colorado State Courts. The *pro se* Petitioner filed pleadings via facsimile, with the District Court for Douglas County, in accordance with the applicable law.

[14] The Petitioner filed the Petition for Relief with the Colorado Supreme Court late in the day on May 16th, 2005. The May 17th, 2005, date and designation of the hearing on the Petition as completed *en banc*. The May 17th, 2005, date and designation of the hearing on the Petition as

sharply contrasts with the Chief Justice's pledge to secure equal access to Colorado courts for the public.[15] (Pet. App. 218-A to 223-A). The Chief Justice administered a federal grant in furtherance of the policy goal of equal filing access for Colorado's *pro se* litigants. (Pet. App. 218-A to 223-A). The Chief Justice fails to administer Colorado courts in furtherance of the goal of equal access for *pro se* litigants. (Pet. App. 1-A to 4-A).

The Chief Justice creates, implements and administers the customs, practices and procedures governing Special Advocate appointments to Colorado courts. (Pet. App. 47-A to 55-A). These customs, practices or procedures are designed to protect third party appointees from accountability to the people of the State of Colorado. (Pet. App. 47-A to 55-A). The obstruction of a litigant's access to the Special Advocate's file, where the Petitioner's fundamental rights are implicated, violates the Petitioner's constitutional right confront a witness. (Pet. App. 5-A to 132-A). Lastly, where the Petitioner's fundamental rights are implicated, the Petitioner must receive actual notice of, and be afforded the opportunity to respond to, pleadings filed with the trial court. (Pet. App.5-A to 12-A).

The trial court's order violates the Petitioner's rights as protected by first, fifth, and fourteenth amendments. (Pet. App. 5-A to 12-A, 15-A to 19-A, 88-A to 99-A). The Petitioner's pleadings were sent back by the trial court. (Pet. App. 5-A to 12-A, 15-A to 19-A, 88-A to 99-A). The

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completed *en banc*, and the May 19th, 2005 date on the certificate of service, appear to be the result of a clerical or an administrative error.

[15] Chief Justice Mary Mullarkey pledged to the public that with the Federal Grant, Colorado's low-income *pro se* litigants would have e-filing access.

current orders are designed to restrict the content of the Petitioner's pleadings[16].

The trial court acknowledged the Petitioner's *pro se* status. (Pet. App. 22-A to 27-A). The Petitioner's former counsel had not signed any pleadings nor had any involvement in the Petitioner's proceedings. (Pet. App. 22-A to 27-A). The Petitioner's former counsel was served in place of the pro se Petitioner. (Pet. App. 5-A to 12-A). The trial court entered an order without requiring service upon the Petitioner. (Pet. App. 5-A to 12-A).

The record accurately reflected that Petitioner was *pro se*. (Pet. App. 22-A to 27-A). The Magistrate ruled the Petitioner's due process rights were not implicated. (Pet. App. 15-A to 19-A). The Petitioner did receive not receive actual notice of the pleading and was not afforded the opportunity to respond. (Pet. App. 5-A to 12-A, 15-A to 19-A).

The Special Advocate is privately compensated pursuant to court order. (Pet. App. 28-A to 32-A). The June 28th, 2004 order of appointment issued by the Magistrate required Respondent Hollman to disclose all information to the parties. (Pet. App. 28-A to 32-A). The Petitioner's right to confront a material witness is preempted by the Magistrate and the trial court. (Pet. App. 15-A to 19-A).

The Magistrate, through the *Multi-Door Court Services Office*, required the Petitioner to re-litigate permanent orders decided in 2002. (Pet. App. 33-A to 36-A). The *Multi-Door Court Services Office* is a pilot program originating in the

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[16] Magistrate Beth Eliott-Dummler ruled on Petitioner's *pro se* motions, as submitted via facsimile on May 3, 2005. On the same day, Respondent Magistrate Beth Elliott-Dummler also ruled that Douglas County did not permit facsimile filing and enjoined his future filings. (Pet. App. 14-A to 18-A) The All local rules were repealed and superceded by legislative enactment. *See* C.R.C.P. 121 § 1-25 (2004). (Pet. App. 39-A to 42-A)

trial court's judicial district[17]. (Pet. App. 189-A to 217-A). In practice, the program serves to lock children and families into continued adjudication and increase revenue for Special Advocates and other court appointees. (Pet. App. 56-A to 87-A). The Chief Justice is responsible for the creation, implementation and constitutional administration of these programs. (Pet. App. 47-A to 55-A, 103-A to 217-A).

The Chief Justice publicly espoused the commitment of the Colorado Judicial Branch to assisting low-income litigants shut out of the judicial system. (Pet. App. 218-A to 223-A). Yet, the child and family laws, policies, practices and procedures that the Chief Justice promulgates are designed to shift costs to the parties. (Pet. App. 56-A to 87-A). The Chief Justice even "pledged to take a leadership role in the state judiciary to make equal justice a reality for Coloradoans of all income levels." (Pet. App. 218-A to 223-A). The Chief Justice's failure to properly administer the federal funding in furtherance of *pro se* litigants' access to the courts is exemplified by the trial court's orders enjoining the Petitioner from filing even via facsimile. (Pet. App. 15-A to 19-A).

The Petitioner's full-time employment renders his response to and observance of the trial court's deadlines impracticable if not impossible. (Pet. App. 5-A to 12-A). Facsimile filing is the only alternative for *pro se* litigants to meet court deadlines. An order designed to enjoin *pro se* litigants from filing via facsimile does not reflect a commitment to assisting low-income litigants. Moreover, the Colorado law establishes the Petitioner's right to file via facsimile. (Pet. App. 40-A to 44-A). The Magistrate even ruled on the Petitioner's *pro se* motions, as submitted via facsimile, on the same day she ordered that the trial court did

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[17] Eighteenth Judicial District of the Colorado Judicial Branch.

not accept filings submitted via facsimile in accordance with a local rule. (Pet. App. 15-A to 19-A). No local rule was in place. Further, the rule would not be enforceable[18]. (Pet. App. 15-A to 19-A). The *pro se* Petitioner filed pleadings in accordance with applicable law. (Pet. App. 40-A to 43-A). The clerk of the court[19] was to distribute copies of the motions filed via facsimile to the courtroom clerk. (Pet. App. 40-A to 43-A).

The trial court will not provide minimal due process protections to the Petitioner. (Pet. App. 5-A to 12-A, 15-A to 19-A). The Petitioner's former counsel was served with pleadings in place of the *pro se* Petitioner nearly four months after the Petitioner terminated his counsel of record. (Pet. App. 5-A to 12-A, 15-A to 19-A). The record reflects that the Petitioner was *pro se*. (Pet. App. 22-A to 27-A). The Petitioner's *pro se* status and home address was conspicuous in the caption of each pleading submitted to the trial court. (Pet. App. 22-A to 27-A). The trial court denied the Petitioner the opportunity to respond to the motion. (Pet. App. 15-A to 19-A). The Magistrate ruled that the Petitioner's due process rights were not violated. (Pet. App. 15-A to 19-A). The trial court's ruling cannot be reconciled with an acknowledgment of the Petitioner's due process rights. (Pet. App. 15-A to 19-A). Further, the ruling cannot be reconciled with the Petitioner's unqualified right to

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[18]The authority of a district court to create rules is recognized only where no conflict with the Colorado rules of civil procedure is presented. *See Danburg v. Realties, Inc.*, 677 P.2d 439 (Colo. App. 1984). Access to the courts via facsimile is established by the legislature as a matter of statewide concern. (Pet. App. 39-A to 42-A). The trial court is bound by statewide Practice Standards as established by Colorado law. (Pet. App. 39-A to 42-A).

[19] Cheryl Lane

discharge his attorney. (Pet. App. 5-A to 12-A). Further, a court may not allow a party to proceed concurrently as a represented party and as a *pro se* litigant. (Pet. App. 5-A to 12-A).

The order of appointment for the Special Advocate established that the Special Advocate was to disclose the underlying data in her file to the parties. (Pet. App. 28-A to 32-A). The Magistrate denied the Petitioner's request for the data. (Pet. App. 15-A to 19-A). The Special Advocate is privately compensated under contract but pursuant to court directive. (Pet. App. 28-A to 32-A). The trial court's order establishes that the Petitioner's contract with the Special Advocate is not enforceable. (Pet. App. 15-A to 19-A)

The Petitioner's right to confront a material witness is preempted by the trial court's order. There is no basis for the denial. The Magistrate's own orders support the Petitioner's right of access to the Special Advocate's files. (Pet. App. 28-A to 32-A). The Special Advocate is appointed, in part, to testify. (Pet. App. 56-A to 87-A).

REASONS FOR GRANTING THE WRIT

1. THE COLORADO SUPREME COURT'S DISMISSAL OF THE ORIGINAL ACTION CONFLICTS WITH THIS COURT'S DECISION IN *TENNESSE V. LANE*

The trial court's order, and its affirmation by the Colorado Supreme Court, Petition implicate the right of access to the courts. *See e.g. Board of Trustees v. Garrett*, 531 U.S. 356, 372 (2001). The Petitioner's right of access to the courts at issue is protected by the Due Process Clause of

the Fourteenth Amendment. The State acts through its judicial authority, and the constitutional provisions addressing this authority, include the State's judges. State courts are being used to injure individuals, either because the state courts are powerless to stop deprivations, or conform with unconstitutional designs to abjure federally protected rights. *See e.g. Mitchum* v. *Foster*, 407 U.S. 225, 240 (1972). Federal remedies serve to safeguard the public from against constitutional violations executed by state judges. *See* e.g. *City of Littleton v. Z. J. Gifts D-4, L.L.C.*, 541 U.S. 774, 793 (2004). The State of Colorado, through it judicial power, is in the process of perfecting a plan to eliminate due process protections afforded to Colorado's children and families. That the trial court retaliated against the Petitioner, and that the Colorado Supreme Court condoned the retaliation, for questioning the constitutionality of these proceedings, supports the premises advanced in this Petition.

The Petitioner's right of access to the courts is subject to undue burden. The act must be an act of adjudication to qualify as a judicial act. *See Morrison v. Lipscomb*, 877 F.2d 463, 465 (6th Cir. 1989). Judicial officers are not engaged in a discretionary function when creating, implementing, and executing the administration of Colorado courts in accordance with constitutional principals elucidated by this Court.

The state must be protected from liability for damages resulting from infringement on the right of access. *See e.g. Tennessee v. Lane*, 541 U.S. 509 (2004). Even a single incident directed by a high-ranking official causing a constitutional violation may result in governmental liability. *See Quinn* v. *Syracuse Model Neighborhood Corp.*, 613 F.2d 438 (2d Cir. 1980). This Petition exemplifies official acts in furtherance of the execution of the unconstitutional design espoused by the Chief Justice and other high-ranking

officials. (Pet. App. 103-A to 188-A). The due process clause requires that, within the limits of practicability, a State is afford to all individuals a meaningful opportunity to be heard" in its courts. *See Boddie* v. *Connecticut,* 401 U. S. 371, 379 (1971). This Petition reveals that Colorado's judicial authority is asserted to undermine federal law. This court's intervention is imperative.

The right to meaningful access is grounded in the First Amendment right to petition the government for redress of grievances. *See generally, Elrod v. Burns*, 427 U.S. 347 (1976). It is well settled that loss of First Amendment freedoms even for a minimal period of time constitutes irreparable injury. *See Id.* The threat of retaliation itself constitutes irreparable injury. See *Gibbs v. King*, 779 F.2d 1040, 1046 (5th Cir. 1986). It is confidence in the men and women who administer the judicial system that is the true backbone of the rule of law. *Bush v. Gore*, 531 U.S. 98, 129 (Stevens, J., dissenting).

2. TO DENY THE PETITIONER NOTICE IS TO DENY A FUNDAMENTAL DUE PROCESS RIGHT

The Due Process Clause, as applied to Colorado via the Fourteenth Amendment, both guarantee the Petitioner's right to participate in all stages of a proceeding implicating a fundamental right. This Court has consistently distinguished civil cases involving state controls or intrusions on family relationships from other types of civil cases. *M.L.B. v. S.L.J.*, 519 U.S. 102, 114 (1996) citing *Boddie* v. *Connecticut*, 401 U.S. 371, 374 (1970). The State is required to provide access to its judicial processes in this context. M.L.B. v. S.L.J. 519 U.S. 102, 114 (1996). Proper service is fundamental to any procedural imposition on a party. *See Michetti Pipe Stringing, Inc. v. Murphy Bros., Inc.*, 526 US

344, 355 (1999).

A state may not interfere with a party's right to appear *pro se*. *See generally, Faretta v. California*, 422 U.S. 806 (1974). Colorado courts may not deny a *pro se* litigant the right to notice, particularly where contempt where his associational rights with his children and the threat of contempt lies. This Court has held that parents must be afforded ample means to contest charges of unfitness. *See Santosky v. Kramer*, 455 U.S. 745, 747-48, 769 (1982). This duty to accommodate is perfectly consistent with the well-established due process principle that, within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard in its courts. See *Boddie v. Connecticut,* 401 U.S. 371, 379 (1971). The trial court's denial of the Petitioner's right to notice and an opportunity to respond to the pleadings Is unsupportable. Moreover, the Colorado Supreme Court declined to remedy the infraction.

3. THE COLORADO SUPREME COURT'S DISMISSAL OF THE PETITION CONFLICTS WITH THIS COURT'S RULING IN *TROXEL V. GRANVILLE*

The Fourteenth Amendment's Due Process Clause "provides heightened protection against government interference with certain fundamental rights and liberty interests," *Washington* v. *Glucksberg,* 521 U.S. 702, 720 (1997). The ability to make decisions concerning the care, custody, and control of one's children is a fundamental right. See *Stanley* v. *Illinois,* 405 U.S. 645, 651 (1971).

There is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children. *Troxel v. Granville*, 530 U.S. 57 (2000) (citations omitted). The Special Advocate's role in the Petitioner's

proceedings violates these tenets. The Colorado Judicial Branch, through the Chief Justice, affords no constitutional protections against the Special Advocate's assumption of the constitutionally protected decisions. (Pet. App. 28-A to 32-A). The Due Process Clause protects personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. *Romer* v. *Evans,* 517 U.S. 620, 624 (1996).

Due process requires that there not be a financial conflict of interest between any person exercising adjudicatory authority under the law and the person who is the subject of that authority. *See Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986). Special Advocates profit financially from exacerbating conflict and prolonging adjudication. Moreover, Special Advocates are not subject to professional accountability. (Pet. App. 103-A to 188-A). A court's delegation of judicial authority to a Special Advocate violates the Due Process Clause of the Fourteenth Amendment. A petitioner's due process rights are violated where statutory procedures allowed for orders to be obtained without participation by a judge. *See North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975).

THE DENIAL OF ACCESS TO THE SPECIAL ADVOCATE'S FILE OFFENDS THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

The right to confront and cross-examine witnesses has "long been recognized as essential to due process." See *Chambers* v. *Mississippi*, 410 U.S. 284 (1973). Special

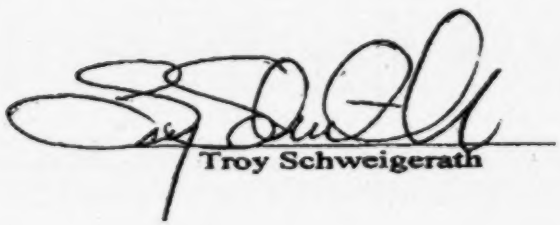
Advocates are to perform and independent investigation and report objective findings to the court. (Pet. App. 44-A to 46-A). The constitutional right of confrontation assists to

assure the "accuracy of the truth-determining process." See *Dutton* v. *Evans*, 400 U.S. 74, 89 (1970). Special Advocates are of little value to the search for the truth if the accuracy of their findings cannot be tested.

The Chief Justice implemented a rule designed to prevent litigants from accessing Special Advocate's files. (Pet. App. 47-A to 55-A). The rule is designed to protect Special Advocates from accountability. The rule further evidences that the Chief Justice will continue to implement measures to erode due process protection for Colorado's children and families.

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,



Troy Schweigerath

Dated: June 20, 2005.

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14. New Colorado Statutes, signed by Colorado Governor Owens on June 2, 2005 and June 3, 2005, replacing, amending and adding to current C.R.S. §§ 14-10-116 and 14-10-127 .....56-A – 87-A

15. Plaintiff's fax filing cover sheets and confirmations ...
.....88-A – 99-A

16. Letter from State of Colorado, Eighteenth Judicial District, returning Plaintiff's fax filed documents, indicating they do not accept fax filing, dated May 12, 2005 .....100-A – 102-A

17. Colorado Judicial Branch's *Commission on Families in the Colorado Courts Report*, commissioned by Colorado Chief Justice, Mary Mullarkey .....
.....103-A – 188-A

18. Colorado's Office of Dispute Resolution's information and guidelines .....189-A – 217-A

19. Internet Article, Csindy.com: *Public Eye*, by Cara DeGetter, dated October 19, 2000 .....218-A – 221-A

20. Press Release: *Colorado to Debut Free E-Filing, Courthouse Kiosks To Assist Low-Income Litigants Shut Out of the Justice System* .....222-A – 223-A

SUPREME COURT STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203 ORIGINAL PROCEEDING DISTRICT COURT, DOUGLAS COUNTY, 02DR477	Case No. 05SA142
In re the Marriage of: **Petitioner:** DAWNA L. SCHWIEGERATH, And **Respondent:** TROY SCHWIEGERATH.	
ORDER OF COURT	

Upon consideration of the Petition for Relief Pursuant to C.A.R. 21 filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Petition for Relief Pursuant to C.A.R. 21 shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, MAY 17, 2005.

[Official Court Seal]

Copies mailed via the State's Mail Services Division on 5-19-05(j) EAC

TROy Schwiegerath
6955 W. Polk Ave.
Littleton, CO 80123

Honorable Beth Elliott-Dummler
Magistrate
Douglas Combined Courts
4000 Justice Way, Ste. 2009
Castle Rock, CO 80104

Frances C. Fontana
Fontana & Associates, P.C.
5941 Middlefield Road, Suite 201
Littleton, CO 80213

Clerk of the Douglas Combined Courts
4000 Justice Way, Ste. 2009
Castle Rock, CO 80104

SUPREME COURT STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203 ORIGINAL PROCEEDING DISTRICT COURT, DOUGLAS COUNTY, 02DR477	Case No. 05SA142
In re the Marriage of: **Petitioner:** DAWNA L. SCHWIEGERATH, And **Respondent:** TROY SCHWIEGERATH.	
ORDER OF COURT	

Upon consideration of the Petition for Rehearing and Amended Petition for Relief Pursuant to C.A.R. 21 filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Petition for Rehearing shall be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that said Petition for Relief Pursuant to C.A.R. 21 shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, MAY 26, 2005.

[Official Court Seal]

Copies mailed via the State's Mail Services Division on 5-26-05(j) EAC

Troy Schwiegerath
6955 W. Polk Ave.
Littleton, CO 80123

Frances C. Fontana
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5941 Middlefield Road, Suite 201
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Clerk of the Douglas Combined Courts
4000 Justice Way, Ste. 2009
Castle Rock, CO 80104

Honorable Beth Elliott-Dummler
Magistrate
Douglas Combined Courts
4000 Justice Way, Ste. 2009

Castle Rock, CO 80104

DISTRICT COURT DOUGLAS COUNTY, COLORADO Court Address: 4000 Justice Way Castle Rock, Colorado 80109-7546	**^ COURT USE ONLY ^**
In Re the Marriage of: **Petitioner: DAWNA L. SCHWIEGERATH** **Respondent: TROY SCHWIEGERATH**	Case Number: 02 DR 477 Division: 3
Troy Schwiegerath Respondent, *pro se* 6955 W. Polk Ave. Littleton, CO 80123	

RESPONDENT'S OBJECTIONS TO ORDERS ISSUED MAGISTRATE DUMMLER ON MAY 3, 2005

COMES NOW, the Respondent, *Pro Se*, and submits his Objections to Orders issued by Magistrate Dummler on May 3, 2005, and states as follows:

1. This Court may not deny the Respondent his right of access. *See* Magistrate's Order dated May 3, 2005. This

Court is bound by the Practice Standards established by C.R.C.P. 121. Access to the courts through facsimile filing for *pro se* litigants and disabled persons is established by the legislature as a matter of statewide concern. *See* C.R.C.P. 121(c); *See also* C.R.C.P. 121 § 1-25. *Pro se* litigants do not have access to electronic filing systems. *See also* C.R.C.P. 121 § 1-26. Douglas County has not instituted a local rule which prohibits filing via facsimile. *But see* Magistrate's Order dated May 3, 2005, at p. 1, ¶ 5. This Court does not rely on a duly enacted local rule. *See* Magistrate's Order dated May 3, 2005, at p. 1, ¶ 5. The action is arbitrary. This Court accepted and ruled upon the Respondent's pleading filed via facsimile. The clerk of the court was responsible for delivering a copy of the Respondent's motions filed via facsimile and distributing those copies to the courtroom clerk. *See* C.R.C.P. 121 § 1-25 *Committee Comment.*

2. This Court accepted and ruled upon the Respondent's *pro se* motions. This Court ruled concurrently on a motion filed by the Respondent's former counsel and the Respondent's *pro se* motions. The court also ruled that the Petitioner's counsel was not required to serve the Respondent as a *pro se* litigant. *See* Magistrate's Order dated May 3, 2005, at p. 1, ¶ 5. A party may not act concurrently as both a *pro se* litigant and a represented party.

3. The courts are always open for filing. *See* C.R.C.P. 77. The Practice Standards, which establish alternative means for filing, are designed to comport with this rule. *See* C.R.C.P. 121 § 1-26, Committee Comment. Magistrate Dummler does not identify a local rule to support her ruling. Further, the Practice Standards established by C.R.C.P. 121 preempt and control in their form and content over any differing local rule. *See* C.R.C.P. 121(c).

4. Motions are to be determined promptly upon the written motion and brief. *See* C.R.C.P. 121 § 1-15(1). February 8, 2005, the *Respondent filed his Motion to Correct and Certify Post-Decree Adjudication in Accordance with Applicable Law*. The Petitioner failed to respond. This Court did not rule on the Petitioner's untimely request for a continuance. The Court was without discretionary power to deny the admission to the Respondent. *See e.g. Sauer v. Heckers*, 524 P.2d 1387 (Colo. 1974). Motions for continuances must be must determined in accordance with C.R.C.P. 121 § 1-15. *See* C.R.C.P. 121 § 1-11. A party who refuses to respond within the required time thereby admits the moving party's allegations. *See Orebaugh v. Doskocil*, 359 P.2d 671 (Colo. 1961). Allegations deemed admitted need not be proved. *See Id.* It is an abuse of discretion for the Court to assume an adversarial position against the moving party by defending a party who refuses to act. *See Homsher v. District Court*, 602 P.2d 5 (Colo. 1979).

5. Courts are required to issue findings of fact in accordance with the Uniform Dissolution of Marriage Act independently. *See In re Marriage of Fickling*, 100 P.3d 571, 574 (Colo. App. 2004). No parental rights or responsibilities are conferred by agreements. *See Id.* at 575. This Court's references to C.R.S. § 14-10-129(2)(d) are inapplicable. No party to this action has invoked the provisions of this statute. A stipulation which serves to delegate the court's judicial authority is void as a matter of law.

6. The Respondent's allegations as set forth in her *Verified Motion to Enforce Parenting Time* were inadequate as a matter of law. *See* C.R.S. § 14-10-129.5(1)(a). The Respondent established that the Petitioner's were insufficient. *See Respondent's Reply to Petitioner's Re: Petitioner's Motion for Declaratory Relief Pursuant to C.R.C.P. 57 and*

Notice of Constitutional Violations. The Petitioner is not entitled to relief from the Respondent for the consequences of her own violations of applicable law.

7. Alexxy Schwiegerath has a constitutional right to be free from neglect. Moreover, as a fit parent, the Respondent has a legal duty to the care for his daughter Alexxy Schwiegerath. *See Prince v. Massachusetts*, 321 U.S. 158 (1944). The Respondent, Troy Schwiegerath, is subject to criminal prosecution for failure to protect children from abuse and neglect. *See* C.R.S. 19-3-308; *See also In re D.L.E.*, 614 P.2d 873 (Colo. 1980).

8. The Petitioner has failed to serve the Respondent her *Verified Motion to Enforce Parenting Time.* The Respondent was not served in accordance with C.R.C.P. 121 § 1-26. The Respondent was *pro se.* The Petitioner's counsel could not have served the Respondent electronically. Only attorneys are entitled to file electronically. *See* C.R.C.P. 121 § 1-26. Notice requirements were not satisfied. The Court was without jurisdiction to adjudicate the allegations raised in the *Petitioner's Verified Motion to Enforce Parenting Time.*

9. The Petitioner has failed to demonstrate by a preponderance of the evidence that she is entitled to attorney's fees. *See City of Holyoke v. Schlachter Farms R.L.L.P.*, 22 P.3d 960 (Colo. App. 2001). The Petitioner failed to attach the requisite information to her motion. *See generally* C.R.C.P. 121 § 1-22. This Court failed to make the requisite findings of fact to award attorney fees, a court must consider the factors set forth in § 13-117-103 (1). *See In re Aldrich*, 945 P.2d 1370 (Colo. 1997). In deciding whether to award attorney fees and in assessing the amount of such fees under section 13-17-102, a trial court is to consider at least the factors set forth in section 13-17-103(1), which are:

(a) The extent of any effort made to determine the validity of any action or claim before said action or claim was asserted;
(b) The extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses found not to be valid within an action;
(c) The availability of facts to assist a party in determining the validity of a claim or defense;
(d) The relative financial positions of the parties involved;
(e) Whether or not the action was prosecuted or defended, in whole or in part, in bad faith;
(f) Whether or not issues of fact determinative of the validity of a party's claim or defense were reasonably in conflict;
(g) The extent to which the party prevailed with respect to the amount of and number of claims in controversy;
(h) The amount and conditions of any offer of judgment or settlement as related to the amount and conditions of the ultimate relief granted by the court.

A determination of entitlement to attorney fees cannot be made without adequate findings of fact and conclusions of law on the issue by the trial court. *See Board of County Comm'rs v. Auslaender*, 745 P.2d 999 (Colo. 1987); *See also Pedlow v. Stamp*, 776 P.2d 382 (Colo. 1989). The trial court did not specify the reasons why the Respondent's pleadings are substantially frivolous, substantially groundless or substantially vexatious. *See e.g. Artes-Roy v. Lyman*, 833 P.2d 62, 63 (Colo. App. 1992). The Court has failed to address the merits of the Respondent's motions. As the Respondent presented arguably meritorious facts and legal

theories to this Court in good faith, an award of attorney's fees is not authorized. *See SaBell's, Inc. v. City of Golden*, 832 P.2d 974 (Colo. App. 1991). The Petitioner's filings, however, warranted the imposition of the attorney's fees in accordance with C.R.S. § 13-117-103 (1). *See In re Marriage of Aldrich*, 945 P.2d 1370, 1377 - 1380 (Colo. 1997).

10. According to this court, when the therapist's recommended a change in parenting time, a party could request a hearing. *See* Magistrate's Order dated May 3, 2005, at p. 1, ¶ 2. This Court is required to determine whether a hearing is to be schedule in accordance with the law. *See* C.R.S. § 14-10-129.5(1)(a). A therapist is not entitled to determine whether a party Delegation of the Court's decision-making power to a third party constitutes reversible error. *See People ex rel. A.R.D.*, 43 P.3d 632 (Colo. App. 2001); *See G.A. v. C.V.*, 976 P.2d 881 (Colo. App. 1999). The Court states that the decisions on parenting time were contingent upon the child's therapist's recommendation. *See* Magistrate's Order dated May 3, 2005, at p. 1, ¶ 2. Further, it is error for the Court delegating decisions on parenting to a therapist as this constitutes a delegation of the court's discretion. *See People ex rel. A.R.D.*, 43 P.3d at 635; *See G.A.*, 976 P.2d at 883. If a stipulation is to serve as an order of the court, the court must issue the requisite findings and ensure compliance with applicable law. The Respondent's efforts to correct and certify any post-decree adjudication were premised upon this requirement.

11. The former Special Advocate Elizabeth Holman retains evidence that the Respondent is entitled to in accordance with the Confrontation Clause of the United States Constitution. The Confrontation Clause applies to both civil and criminal cases. This Court's denial of the litigant's access to the

Special Advocate's violates the Respondent's due process rights as established by the United States Constitution. The Respondent's cannot exercise his right to a full and fair adjudication until this Court ceases to interfere with his access to the courts and to block his discovery of the Special Advocate Elizabeth Holman's file.

12. The Respondent was entitled to declaratory relief as a matter of right. The Respondent's Motions for Declaratory Relief pursuant to C.R.C.P. 57 were to be addressed responded to by the Court in declaratory form. *See e.g. Martinez v. Dept. of Human Servs.*, 97 P.3d 152 (Colo. App. 2003). This court did not issue relief in declaratory form on each of the points raised by the Respondent. The failure was an abuse of this Court's discretion. *See Lot Thirty-Four Venture, L.L.C. v. Town of Telluride*, 976 P.2d 303 (Colo. App. 1998).

Respectfully Submitted this 12th day of May, 2005 by:

_____

Troy Schwiegerath, *Pro Se*

CERTIFICATE OF SERVICE

I hereby certify that on the 12th of May, 2005, a true and correct copy of the foregoing: *Respondent's Objections to Orders issued by Magistrate Dummler on May 3, 2005*, was fax-filed and placed in the United States mail, first class postage prepaid and properly affixed, and addressed to the following:

The District Court
Douglas County, Colorado
4000 Justice Way, Suite 2009
Castle Rock, Colorado 80104

Fax: 303-688-1962

Frances C. Fontana, Esq.
Fontana & Associates, P.C.
5941 Middlefield Road, Suite 201
Littleton, CO 80213
Troy Schwiegerath
Fax: 303-468-2676

DISTRICT COURT DOUGLAS COUNTY, COLORADO Court Address: 4000 Justice Way Castle Rock, Colorado 80109-7546	**COURT USE ONLY**
IN RE THE MARRIAGE OF: Petitioner: DAWNA L. SCHWIEGERATH Respondent: TROY SCHWIEGERATH	Case Number: 02 DR 477 DIV.: 4W CTRM.:
Smith & Cook, LLC Curtis V. Smith, #14303 8441 W. Bowles Ave., #210 Littleton, CO 80123 303-972-9877	

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2005, a true and correct copy of the Court's Order dated May 3, 2005 re:

1. Petitioner Motion to Enforce Parenting Time

2. Respondent Motion to Correct and Certify Post Decree Adjudication in Accordance with Applicable Law
3. Respondent Motion for Declaratory Relief Pursuant to C.R.C.P. 57 and Notice of Constitutional Violations
4. Respondent Motion for Release of Elizabeth Holman File
5. Motion to Withdraw by Respondent Attorney, dated May 3, 2005

was placed in the United States mail, postage prepaid, addressed as follows:

Sarah W. Quinlan, Esq.
Fontana & Associates, P.C.
5941 S. Moddlefield Road, Suite 201
Littleton, CO 80123

Troy Schwiegerath
6955 W. Polk Ave.
Littleton, CO 80123

Lynn Hoffman

DISTRICT COURT DOUGLAS COUNTY, COLORADO Court Address: 4000 Justice Way Castle Rock, Colorado 80109-7546	
Plaintiffs/Petitioner: Dawna L Schwiegerath **Defendants/Respondent: Troy Schwiegerath**	Case Number: 02DR477 Ctrm.: Div 4W

ORDER re:
1. PEITIONER MOTION to ENFORCE PARENTING TIME
2 RESPONDENT MOTION to CORRECT and CERTIFY POST DECREE ADJUDICATION in ACCORDENCE WITH APPLICABLE LAW
3. RESPONDENT MOTION for DECLARATORY RELIEF PURSUANT to C.R.C.P. 57 and NOTICE of CONSITUTIONAL VIOLATIONS
4. RESPONDENT MOTION for RELEASE of ELIZABETH HOLMAN FILE
5. MOTION TO WITHDRAW by RESPONDENT ATTORENY

THIS COURT, having reviewed the pending motions and all relevant documents hereby finds:

1. Separation Agreement ¶ 1.5 states: the children's primary residence will be with the wife.
   a. This fact has not been modified by the stipulated agreement of October 2004.
   b. Stipulated Agreement was made order of the court on October 9, 2002.
2. On or about October 18, 2004, Parties stipulated to changes in Parenting Responsibilities, Parenting Time, and Child Related matters.
   a. In part ¶ 6: "the Parties agree that the parenting time shall follow the rotation set forth herein, and that the shall abide by the aforementioned parenting time, unless or until the children's therapist(s) recommend changes to the parenting time, at which time either parent may contact the court to set the matter for further hearing."
   b. In part ¶ 13: "the parties agree that this stipulation resolved the outstanding issues in the case at this time ..."
3. **C.R.M. 6(b)(1);**
   a. "Functions of Magistrate's in Family law Cases: a District court magistrate shall have the power to preside over all proceedings arising under Title 14 ..."
4. **C.R.S.A § 14-10-129(1)(a)(I):**
   a. Modification of parenting time ... the court may make or modify an

order granting or denying parenting time rights whenever such order of modification would serve the best interests of the child."

5. **C.R.S.P. 5(b):**
   a. Service ... whenever under this rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney ..."
6. **C.R.S.A § 14-10-129(2)(d):**
   a. (2) The court shall not modify a prior order concerning parenting time that substantially changes the parenting time as well as changes the party with whom the child resides a majority of the time unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree , that a change has occurred in the circumstances of the child or the party with whom the child resides the majority of the time and that the modification is necessary to serve the best interests of the child. In applying these standards, the court shall retain the parenting time schedule established in the prior decree unless :

   ...

   1. (d) The child's present environment endangers the child's physical health

or significantly impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

THIS COURT, using its best efforts to interpret *pro se* motions, hereby ORDERS:

1. Respondent's Jurisdictional arguments based on lack of service are DENIED.
   a. Attorney of Record stands until such time as court releases the Attorney through order of the court.
   b. Service of a party through his attorney is valid service for the Purpose of C.R.C.P. 5(b).
2. Respondent's Motions for Release of Special Advocate's File is hereby DENIED.
3. And GRANTS Smith & Cook, LLC permission to withdraw as attorneys for the Respondent.
4. ORDERS parties to set a forewith hearing in this court to address the issue of Alexxy Schwienegerath and the motion to enforce parenting time.
5. Further, Douglas County does not accept filing by facsimile. Therefore, Mr. Schwiegerath is ordered to cease filing by fax in this matter.

So ordered this Tuesday, May 03, 2005.

Beth Elliott-Dumler

Magistrate Beth Elliott-Dumler

RECEIVED APR 2 [illegible] 2005

DISTRICT COURT DOUGLAS COUNTY, COLORADO Court Address: 4000 Justice Way, Suite 2009 Castle Rock, Colorado 80104	[Stamp: Received in Jan 11 2004 Douglas Combined Courts]
In Re Marriage of: **Petitioner: DAWNA L. SCHWIEGERATH** **Respondent: TROY SCHWIEGERATH**	Case Number: 02 DR 477 Div 3 Ctrum.:
ORDER REGARDING RELEASE OF ELIZABETH HOLMAN'S FILE	

This matter having come before this Court upon Motion for Release of Special Advocate's File to Petitioner,

the Court having reviewed the file and being sufficiently advised in the premise, DOTH ORDER:

1. Petitioner's Motion for Release of Special Advocate's File to Petitioner is hereby [written in - "Denied"] [slash through - "APPROVED"] and made an Order of the Court.

2. [slash through - "Elizabeth Holman shall provide a copy of her file directly to Petitioner within thirty (30) days of the date of this Order. Any costs associated with receiving the file shall be the responsibility of the Petitioner.].

Dated this 1st Day of February,l 2005

BY THE COURT:

/s/
DISTRICT COURT MARGISTRATE

DISTRICT COURT DOUGLAS COUNTY, COLORADO Court Address: 4000 Justice Way Castle Rock, Colorado 80109-7546	**COURT USE ONLY**
In Re the Marriage of: **Petitioner: DAWNA L. SCHWIEGERATH** **Respondent: TROY SCHWIEGERATH**	Case Number: 02 DR 477 Division: 3
Troy Schwiegerath Respondent, *pro se* 6955 W. Polk Ave. Littleton, CO 80123	

RESPONDENT'S MOTION TO CORRECT AND CERTIFY POST-DECREE ADJUDICATION IN ACCORDANCE WITH APPLICABLE LAW

COMES NOW, the Respondent, *Pro Se*, and submits this Motion to Correct and Certify Post-Decree Adjudication in Accordance with Applicable Law, and, as grounds therefore, states as follows:

1. On October 9, 2002, this Court issued permanent orders for above-captioned dissolution of marriage proceeding. The Petitioner did not appeal these orders. *See e.g. In re Marriage of Kniskern*, 80 P.3d 939 (Colo. App. 2003). These orders were premised upon children's best interests and reflected the policy of encouraging the parent-child relationship underlying the applicable statutory scheme. *See In re Marriage of Velasquez*, 773 P.2d 635 (Colo. App. 1989); see 14-10-129(2) and 19-1-102(1)(b), C.R.S. 1998. The orders were final. *See Rodriquez v. Schutt*, 914 P.2d 921 (Colo. 1996).

2. A party may stipulate to a modification of parenting time, but such and agreement is not binding on the court. C.R.S. § 14-10-112(1) (2005); C.R.S. § 14-10-112(2) (2005); *See In re Marriage of Kniskern*, 80 P.3d 939 (Colo. App. 2003).

3. A court may modify parenting-time or decision-making only upon a showing that circumstances have changed and that the modification is in the best interests of the child. *See* C.R.S. § 14-10-131. The Petitioner did not satisfy either requirement. *See In re D.V.R.A.,* 976 P.2d 881 (Colo. App. 1999). In addition, reasonable parenting time is mandated, and undue restrictions on parenting time are prohibited, unless the court finds that the exercise of parenting time rights would endanger the child's physical health or significantly impair the child's emotional development. C.R.S. § 14-10-129(1), (2) (2004); *G.A. v. C.V.*, 976 P.2d 881 (Colo. App. 1999).

4. The party seeking modification of parenting time must file an affidavit setting forth factual basis for same. C.R.S. § 14-10-132 (2004). The Petitioner's allegations remain insufficient as a matter of law. Factual statements in an affidavit that are erroneous and false must be stricken from

the record. *See e.g. People v. Malone*, 175 Colo. 31 (Colo. 1971). Only where evidence supports a court's determination, is the court's resolution of a conflict binding. *See* C.R.S. § 14-10-124(6) (2005). A party is entitled to a hearing before a court may prohibit parenting time. See C.R.S. § 14-10-124(1.5)(a) (2004). Due process requires adequate time to present a case. *In re Marriage of Goellner,* 770 P.2d 1387 (Colo. App. 1989).

5. The Respondent demonstrated[1] that the Petitioner fabricated allegations of child sexual abuse[2]. The minor child, Jetta Schwiegerath, confessed that the Petitioner had instructed the minor child her to lie. [*See* Id.] The accompanying police reports also revealed that the Petitioner lied. Even the Petitioner's own statements reflect deliberate fabrication.[3] The Petitioner's false statements, in this context, violate C.R.S. § 18-8-502, a crime categorized as a class four felony.

6. The Petitioner's Verified Motion to Restrict Parenting Time encompassed the modification of parental responsibilities as decision-making responsibilities were at issue. *In re Marriage of Ferris*, 75 P.3d 1170 (Colo. App. 2003). The Respondent's decision-making responsibilities were purportedly altered on October 18, 2004, by Magistrate Elliott-Dumler. Magistrates do not have subject matter

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[1] Verified Motion to Restrict Parenting Time Pursuant to C.R.S. 14-10-129(4) submitted on June 15, 2004.

[2] These allegations served as the basis for her Verified Motion to Restrict Parenting Time filed on July 21, 2004.

[3] The Petitioner contradicts her rendition of the minor child's statements. The Petitioner maintains that the minor child said, "Daddy put a stick up my butt." The Petitioner also claims that the minor child said, "Bree [the Stepmother] shoved a stick up her butt."

jurisdiction to allocate parental responsibilities. *In re Marriage of Ferris*, 75 P.3d 1170 (Colo. App. 2003). A decision executed in the absence of jurisdiction is not binding. *Colorado Springs v. Industrial Com. of State*, 720 P.2d 601 (Colo. App. 1985). The parties cannot confer jurisdiction upon a court, even through consent. *Arevalo v. Colo. Dep't of Human Servs.*, 72 P.3d 436 (Colo. App. 2003).

7. The endangerment standard applies to all modifications of decision-making responsibilities. *In re Marriage of Stewart*, 43 P.2d 740 (Colo. App. 2002). The record did not reflect that the Respondent endangered the minor children. Had the Magistrate assumed jurisdiction over the modification of parental properly, the order still would not stand.

8. The Magistrate's post-decree adjudication, irrespective of legal error, represents a procedurally incomplete determination of the rights of the parties involved. *Gergel v. High View Homes*, L.L.C., 58 P.3d 1132 (Colo. App. 2002). A court's findings are sufficient only when a court considers all pertinent factors and, along with applicable law, to substantiate the order. *In re Marriage of Garst*, 955 P.2d 1056 (Colo. App. 1998).

9. This Magistrate's delegation of authority to modify parenting time to the former Special Advocate was executed in excess of her jurisdiction. *See In re Marriage of Elmer*, 936 P.2d 617 (Colo. App. 1997). The Respondent shall address the resultant professional and ethical implications, in detail, directly to the former Special Advocate. The Respondent requests this Court to cease accepting *ex-parte* communications from the former Special Advocate in accordance with CJD 4-08 (Standard 18). *Ex-parte*

communications with the court violate the basic tenets of due process.

10. A factor in the calculation of child support is the percentage of time the children spend with each parent, any modification of child support here depended on a complete ruling on the Petitioner's motion. *See* C.R.S. § 14-10-115(14) (2004). That the Magistrate did not adjust support orders upon purported modification of parenting-time and decision-making further illustrates the deficiencies enumerated herein by the Respondent.

11. As the Magistrate's orders do not finally dispose of the Petitioner's requests. In order to certify an order pursuant to C.R.C.P. 54(b), this court must correct the deficiencies enumerated above. At present, the parties remain legally bound by the permanent orders as adjudicated on October 9, 2002.

WHEREFORE, the Respondent respectfully requests this court correct the deficiencies enumerated herein and certify an order in accordance with C.R.C.P. 54(b).

Respectfully Submitted this __ day of February, 2005 by:

_____

Troy Schwiegerath, *Pro Se*

CERTIFICATE OF SERVICE

I hereby certify that on the ___of February, 2005, a true and correct copy of the foregoing: RESPONDENT'S MOTION TO CORRECT AND CERTIFY POST-DECREE ADJUDICATION IN ACCORDANCE WITH APPLICABLE LAW, was

placed in the United States mail, first class postage prepaid and properly affixed, addressed to the following:

The District Court
Douglas County, Colorado
4000 Justice Way, Suite 2009
Castle Rock, Colorado 80104

Frances C. Fontana, Esq.
Fontana & Associates, P.C.
5941 Middlefield Road, Suite 201
Littleton, CO 80213

DISTRICT COURT DOUGLAS COUNTY, COLORADO Court Address: 4000 Justice Way, Suite 2009 Castle Rock, Colorado 80104	[Stamp: Electronically filed Douglas County Combined Courts June 28, 2004]
In Re: Schwiegerath **Petitioner(s): Dawna L. Schwiegerath** **Respondent(s): Troy Schwiegerath**	Case Number: 02DR477 Div. 4W
SPECIAL ADVOCATE ORDER	

The Court, having reviewed the Court file and the pleadings within, finds that the appointment of a Special Advocate is necessary to protect the best interest of the minor child(ren) pursuant to Section 14-10-116(2)(b), C.R.S. and Sections 14-10-124 and 14-10-129, C.R.S. It is therefore, ORDERED that Elizabeth Holman, whose address and

telephone number are **303-752-1117, ext. 205 1191 S. Parker Road, Ste. 100, Denver, CO 80231**, is appointed the child(ren)'s Special Advocate to investigate, report and make recommendations in the best interests of the child(ren) on issues relating to parental responsibility and parenting time.

The Special Advocate is appointed because this case involves:

() an unborn child(ren)
() determination of paternity
() a special needs child(ren)
(X) high conflict between the parties
(X) allegations of abuse
() Removal from State of Colorado

The Special Advocate is direct ed to investigate and make recommendations to the Court concerning:

(x) parental responsibility
(x) parenting time
(x) conflicts between the parties
()other
() property division
() allegations of abuse
() potential dependency and neglect issues

It is further ORDERED that the Special Advocate shall comply with C.R.S. § 14-10-116, and the requirements of Chief Justice Directive 97-02. The Special Advocate shall otherwise be immune from all civil and criminal liability to the maximum extent permitted by law. Unless the appointment of the Special Advocate is expressly continued by the Court, the appointment shall terminate upon the resolution of permanent orders or the pending post-decree motion(s).

It if further ORDERED that the Special Advocate shall be provided with copies of all pleadings and papers herein. The Special Advocate shall be notified before any action affecting the minor child(ren) is taken by either party or their counsel. Parties and their counsel shall cooperate with the Special Advocate in the Special Advocate's investigation.

It is further ORDERED that without any further release or liability the Special Advocate upon presentation of a copy of this order to any agency, hospital, organization, school, person or office, including the clerk of this court, pediatrician, psychologist, psychiatrist, law enforcement agency, or social service agency, shall have access to speak privately with the child(ren) at issue in this case, inspect and copy records relevant to parental responsibility and parenting time issues. Notwithstanding this general release, the parties shall immediately provide signed releases to the Special Advocate upon request. The Special Advocate may consult with any person who may have information relevant to parental responsibility and parenting time issues and obtain information from medical, mental health, educational, or other expert persons who have served the child(ren) in the past without obtaining the consent of the parent or the child(ren)'s custodian. With respect to access to mental health records, consent of the child(ren) is required if the child(ren) is fifteen or older.

It is further ORDERED that the Special Advocate shall maintain information received from any source as confidential, and it shall not be disclosed except in reports filed with the Court and parties to this action, or as further authorized by order of the Court. The Special Advocate shall bring to the Court's attention any ethical concerns which may arise. Further, if the Special Advocate believes that the services of other professionals would benefit the parties and

the child(ren) or would assists the Special Advocate in preparing the report, the Special Advocate shall advise the Court and counsel. No such services shall be provided unless agreed to by both parties or ordered by the Court, except each party may obtain professional services from himself/herself at any time.

It is further ORDERED that the Special Advocate shall be included and shall participate in all status conference with the parties and the Court. The Special Advocate shall, orally or in writing, update the Court as to how the process is proceedings, the status of payment of the Special Advocate, and/or any immediate or emergency issues impacting the child(ren) that the Court needs to address. The Special Advocate shall attempt to communicate with the parties prior to each status conference, so that any pertinent information for or from the Special Advocate may be shared. The next hearing in this matter is on July 21, 2004 in Douglas County, Div. 4W commencing at 100:00 a.m.

It is further ORDERED that after the Special Advocate has thoroughly and independently investigated the issues affecting the minor child(ren), the Special Advocate shall file a clear, concise, written report setting forth independent and informed recommendations to the Court regarding the best interests of the child(ren) as addressed in C.R.S. §14-10-124 and C.R.S. §14-10-129 at least 10 days prior to any hearing. The child(ren)'s wishes, if expressed, shall be included in this report but the Special Advocate need not adopt these wishes in his or her recommendations to the Court. The Special Advocate shall be prepared to participate in a settlement conference with the parties, and/or testify as a witness regarding his or her recommendations. The parties and their respective counsel are strictly prohibited from

sharing the Special Advocate's report or their impressions/opinions of the report with the minor child(ren).

The parties shall pay $3,000.00 as retainer, directly to the Special Advocate within five (5) days of receipt of this order each party paying such fee Petitioner 50% and Respondent 50%. Special Advocate's fees are to be billed at an hourly rate of $140 during the pendency of this action, and the retainer shall be replenished as necessary for the Special Advocate to complete the tasks set forth herein.

It is further ORDERED that the matter of the Special Advocate's fees may be reconsidered at a further hearing. Consideration as to the payment of the Special Advocate's fees shall be based upon the financial status of the parties as well as the necessity and reasonableness of the Special Advocate's fees. **If there is any basis for state payment of the parties' share of the expense of the Special Advocate because of indigency, there must be a proper motion filed with the Court complete with the indigent party's application form JDK-208 and a copy of the other party's most recent financial affidavit.**

Date this 20th day of June, 2004.

/s/

Beth Elliott-Dumler
District Court Magistrate

Douglas Combined Court, Douglas County, Colorado 4000 Justice Way, Suite 2009 Castle Rock, Colorado 80109 303-663-7200	
Petitioner(s): **Respondent(s):**	Case Number: Div.
POST DECREE DOMESTIC RELATIONS CASE MANAGEMENT ORDER	

This Case Management Order has been:

- o Emailed to: _____
- o Hand Delivered to: _____
- o Mailed to: _____

Date: _____ Judicial Assistant: _____

I. A. Case Assignment:

EVEN: Case ending in even numbers will be assigned to Division 3, Magistrate Gresh. Division Clerk (303)663-7241.

ODD: Cases ending in odd number will be assigned to Division 4W, Magistrate Elliott Dumler, Division Clerk (303)663-7242.

B. All Matters Not Involving Immediate Child Endangerment:

1. The parties must exchange updated financial information pursuant to C.R.C.P. Rule 26.2 and a child support worksheet (if applicable) within 30 days after service upon the other party and mediate the matter within 60 days. If the mediation is scheduled before the 30th day, you must exchange the financial information 10 days prior to mediation.
2. If the matter is not fully resolved following mediation, the parties are to contact the division for the next setting according to case number within 75 days of the date of this order.

C. Matters Involving Immediate Child Endangerment:

1. Contact the Division upon filing for the next case setting.

D. Mediation Generally:

1. If your case does not involve immediate child endangerment, you must complete mediation within 60 days of the date the post-decree motion is served on the responding party. If you can not agree upon a mediator within 15 days after service on the responding party, you must schedule mediation with the Arapahoe County Multi-door mediation service at (303)649-6275. The party seeking relief is responsible for scheduling the date, however, both parties must contribute equally to the mediation cost.

E. Status Conference

If a status conference is set, the court will be addressing outstanding discovery or necessary discovery, the appointment of experts, dates and times for further status conferences or hearings, exchanges of information in preparation for trial **and any other interim orders necessary to protect the children or needed to assist the process.** Counsel is expected to confer with opposing counsel and/or unrepresented parties regarding this issue prior to the status conference.

F. General

Failure to file all documents with the District Court Clerk's office at least seven (7) business days prior to a set hearing, conference and or permanent orders hearing may result in the documents being unavailable for the setting and will result in their unavailability for copies on that date and time. Failure to exchange all witness lists, reports and marked documentary exhibits with the other parties(s) at least seven (7) business days prior to hearing will result in such evidence being deemed inadmissible absent good cause shown.

PETITIONER SHALL SEND A COPY OF THIS ORDER, NOTICE OF HEARING AND ALL OTHER DOCUMENTS FILED WITH THE COURT TO ALL COUNSEL AND SELF-REPRESENTED PARTIES UPON THEIR ENTRY OF APPEARANCE IN THIS ACTION AND FILE A CERTIFICATE OF SERVICE.

SO ORDERED:

Dated this 13th day of January, 2004

By the Court:

_____/s/_____
Angela R. Arkin
District Court Judge

_____/s/_____
Louis A. Gresh
District Court Magistrate

_____/s/_____
Beth Elliott-Dumler
District Court Magistrate

CERTIFICATE OF MAILING (TO BE SIGNED BY PETITIONING PARTY AND FILED WITH THE COURT): I hereby certify that the foregoing Domestic Relations Case Management Order was mailed to _____, with proper postage affixed thereon, at the following address: _____ on this ___ day of _____ 200__.

_____
(signature of person mailing order).

THE UNITED STATES CONSTITUTION

Article. III.

Section. 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2.

Clause 1: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State; *(See Note 10)*--between Citizens of different States, --between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Clause 2: In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress

shall make.

Clause 3: The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

*****

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

*****

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

*****

Amendment XIV.

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of

Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

*****

COLORADO COURT RULES
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FEBRUARY 1, 2005 ***

COLORADO RULES OF CIVIL PROCEDURE
CHAPTER 17A Practice Standards and Local Court Rules
C.R.C.P. 121 (2005)
Rule 121. Local Rules -- Statewide Practice Standards.

*****

Section 1-25

FACSIMILE COPIES

1. Facsimile copy, defined. A facsimile copy is a copy generated by a system that encodes a document into electrical signals, transmits these electrical signals over a telephone/data line, then reconstructs the signals to print an exact duplicate of the original document at the receiving end.

2. Facsimile copies which conform with the quality requirements specified in C.R.C.P. 10(d)(1) may be filed with the court in lieu of the original document. Once filed with the court, the facsimile copy shall be treated as an original for all court purposes. If a facsimile copy is filed in lieu of the original document, the attorney or party filing the facsimile shall retain the original document for production to the court, if requested to do so.

3. The court is not required to provide confirmation that it has received a facsimile transmission.

4. Any facsimile copy transmitted directly to the court shall be accompanied by a cover sheet which states the title of the document, case number, number of pages, identity and voice telephone number of transmitter and any instructions.

5. Payment of any required filing fees shall not be deferred for documents filed with the court by facsimile transmission.

6. This rule shall not require courts to have a fascimile machine nor shall the court be required to transmit orders or other material to attorneys or parties via facsimile transmission.

Source: Entire rule added and effective September 6, 1990.

COMMITTEE COMMENT

Facsimile transmissions are becoming commonplace in the business world. It was therefore deemed reasonable that the court system adapt to accommodate the use of this technology. Use of the technology, however, should not create more work for court staff. In order not to add to the duties of overburdened court personnel, provision is made that court personnel need not provide confirmation that a facsimile transmission has been received. This should not create difficulty for attorneys because almost all equipment manufactured today provides confirmation that a document has been received. This confirmation should be attached to the document sent and retained with the original document in the party's file.

The committee envisioned at least two ways in which facsimile filings could be accomplished. The first would be an arrangement where the facsimile machine would be located in a court clerk's office. The other would be where transmissions would be made to a machine outside the courthouse and then delivered to the clerk for filing. These rules were designed to accommodate both kinds of filings.

Ordinary thermofax paper fades in sunlight, deteriorates with handling and has a short shelf life. Therefore, only permanent plain paper which is not subject to these infirmities is acceptable for court purposes.

The committee also recognized that a requirement for filing of the original after filing of a facsimile copy would create more work for court staff. The committee therefore decided to accept facsimile copies in lieu of the original with the provision that the original would be maintained if it were ever needed for any purpose.

The requirement under C.R.C.P. 121, Sec. 1-15 for filing of a copy of any motions or briefs has been modified so that a copy is also filed with the clerk of the court. The clerk of the court is then responsible for distributing the copy to the courtroom clerk. This change is necessary because the courtroom clerk will ordinarily not have a separate facsimile machine.

Some judicial districts have or are acquiring the ability to accept credit cards or bank cards for payment of fees and fines. In the judicial districts where bank cards can be used for payment, parties may file complaints, answers and other pleadings which require a filing fee by faxing an appropriate bank card authorization along with the pleadings. If a judicial district does not accept payment by bank card, those types of pleadings cannot be filed by facsimile transmission because payment of filing fees will not be deferred.

The committee believes that reasonable fees can be charged for the costs associated with facsimile filings. However, the setting of such fees is not within the scope of the Rules of Civil Procedure.

The adoption of this rule does not require an attorney to have a designated facsimile telephone number.

*****

COLORADO REVISED STATUTES
***** THIS SECTION IS CURRENT THROUGH THE 2004 SUPPLEMENT (2004 SESSIONS) *****
TITLE 14. DOMESTIC MATTERS
DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES
ARTICLE 10. UNIFORM DISSOLUTION OF

MARRIAGE ACT

14-10-116. Appointments in domestic relations cases - representation of child - special advocates

(1) The court may, upon the motion of either party or upon its own motion, appoint an individual for the parties' minor or dependent children or to assist the court in any domestic relations proceeding pursuant to subsection (2) of this section. The court shall set forth the duties of such individual in a written order of appointment, which order shall include a requirement that any attorney appointed pursuant to this section to serve as either a representative of the child or as a special advocate shall comply with the applicable provisions set forth in the chief justice directive 97-02, concerning the court appointment of guardians ad litem and other representatives and of counsel for children and indigent persons in titles 14, 15, 19 (dependency and neglect only), 22, and 27, C.R.S., and any subsequent chief justice directive or other practice standards established by rule or directive of the chief justice pursuant to section 13-91-105 (1) (a), C.R.S., concerning the duties or responsibilities of guardians ad litem and special advocates in legal matters affecting children. In no instance may the same person serve as both the child's representative pursuant to paragraph (a) of subsection (2) of this section and as the special advocate pursuant to paragraph (b) of subsection (2) of this section.

(2) The court may appoint either or both of the following:

(a) An individual to serve as a representative of the child. The individual shall be an attorney. The individual shall represent the best interests of the minor or dependent child,

as that term is described in section 14-10-124, with respect to the child's custody, the allocation of parental responsibilities, support for the child, the child's property, parenting time, or any other issue related to the child that is identified in the court's order of appointment. The individual appointed shall actively participate in all aspects of the case involving the child, within the bounds of the law. Such attorney shall not be called as a witness in the case.

(b) An individual to serve as a special advocate. The special advocate may be, but need not be, an attorney. The special advocate shall investigate, report, and make recommendations on any issues that affect or may affect the best interests of the minor or dependent child as that term is described in section 14-10-124. The subject matter and scope of the special advocate's duties shall be clearly set forth in the court's order of appointment. Such duties shall include the requirement that the special advocate file a written report with the court. The special advocate shall make independent and informed recommendations to the court. While the special advocate shall consider the wishes of the child, the special advocate need not adopt such wishes in making his or her recommendations to the court unless they serve the child's best interests as described in section 14-10-124. The child's wishes, if expressed, shall be disclosed in the special advocate's report. The special advocate may be called to testify as a witness regarding his or her recommendations.

(3) The court shall enter an order for costs, fees, and disbursements in favor of the child's representative appointed pursuant to paragraph (a) of subsection (2) of this section or in favor of the special advocate appointed pursuant to paragraph (b) of subsection (2) of this section or both. The order shall be made against any or all of the parties; except that, if the responsible party is indigent, the costs, fees, and

disbursements shall be borne by the state.

HISTORY: Source: L. 71: R&RE, p. 527, § 1.C.R.S. 1963: § 46-1-16.L. 73: p. 554, § 8.L. 93: Entire section amended, p. 577, § 8, effective July 1.L. 97: Entire section R&RE, p. 32, § 1, effective July 1.L. 98: (2)(a) amended, p. 1399, § 43, effective February 1, 1999.L. 2000: (1) amended, p. 1773, § 3, effective July 1.

SUPREME COURT OF COLORADO
Office of the Chief Justice
DIRECTIVE CONCERNING COURT APPOINTMENTS OF SPECIAL ADVOCATES PURSUANT TO C.R.S. 14-10-116

I. INTRODUCTION.

The following policy is adopted to assist the administration of justice through the appointment and training of special advocates pursuant to section 14-10-116, C.R.S (2003). It is intended to apply to all special advocates appointed pursuant to section 14-10-116, including those special advocates paid with state funds pursuant to either CJD 04-05 or CJD 04-06.

Special advocates were created by statute in 1997 and authorized to investigate, report, and make independent and informed recommendations to the court, following a court appointment by order which clearly sets forth the subject matter and scope of the special advocate's duties. A special advocate can be any individual whom the court believes able to fill this role. In much of the state, attorneys and mental health professionals are appointed exclusively. In rural areas CASAs and trained members of the community such as nurses or educators may round out the pool of potential special advocates.

The Commission on Families in the Colorado Courts recommended in its August 2002 Final Report that standards be drafted to clarify the role and the accountability of special advocates. The Supreme Court's Standing Committee on Family Issues through its Other Professionals Subcommittee solicited comments from members of the public, judges, attorneys, and special advocates from around the state, and

learned that a lack of clear standards has created problems in certain key areas. These are: role clarification and avoidance of multiple roles, communication issues, payment issues, establishment of clear procedures for complaints, and consistency in court procedures.

The standards, duties of the courts, and the model special advocate appointment order set forth in this CJD have been drafted with the knowledge that the role of special advocate will be filled by people from different professions and backgrounds. These standards are intended to provide guidance to special advocates and to provide a structure for regulating conduct in order to better serve the families of Colorado. The standards do not, however, exhaust the ethical and professional considerations that should inform a special advocate in his or her duties. Violation of a standard should not in and of itself give rise to a cause of action nor should it create any presumption that a legal duty has been breached or that a professional ethical violation has occurred. They should be interpreted with reference to the purpose of a special advocate as defined by the statute. The comments set forth with each standard explain and illustrate the meaning and purpose of the standard, and are intended as a guide to that interpretation.

II. STATUTORY AUTHORITY AND EXISTING CHIEF JUSTICE DIRECTIVES

A. Section 14-10-116, C.R.S provides for the appointment of special advocates in domestic relations cases. The special advocate may, but need not, be an attorney. The role of the special advocate, as defined by statute, is to investigate, report, and make recommendations to the court on issues that

affect the best interests of the minor and dependent children involved in a domestic relations case. The subject matter and scope of the special advocate's duties shall be clearly set forth in the court's appointment order.

B. CJD 04-05 and CJD 04-06 were effective May 1, 2004 and CJD 97-02 was repealed effective May 1, 2004. CJD 04-05 addresses appointment and payment procedures for non-attorney special advocates appointed pursuant to Section 14-10-116, C.R.S. These non-attorney special advocates are reimbursed by the State Court Administrator's Office ("SCAO") when parties have been found indigent. CJD 04-06 addresses court appointments of attorney special advocates through the Office of the Child's Representative ("OCR") when parties have been found indigent.

C. This CJD sets forth a comprehensive set of standards for and responsibilities of appointing courts for all special advocates, attorney and non-attorney; whether state paid or privately paid, if appointed pursuant to section 14-10-116, C.R.S.

D. Pursuant to section 14-10-116, C.R.S., special advocates and child's legal representative are the only possible appointments in dissolution cases and those involving allocation of parental responsibility or parenting time. Although guardians ad litem remain in juvenile and probate cases, the statute removed guardians ad litem from domestic relations cases.

III. SPECIAL ADVOCATE STANDARDS

A. GENERAL PRINCIPLES

1. THE SPECIAL ADVOCATE SHALL ACT PROFESSIONALLY
2. THE SPECIAL ADVOCATE SHALL MAINTAIN OBJECTIVITY

B. ROLE OF THE SPECIAL ADVOCATE

3. THE SPECIAL ADVOCATE SERVES AS AN INVESTIGATIVE ARM OF THE COURT
4. THE SPECIAL ADVOCATE SHALL NOT SERVE DUAL ROLES
5. THE SPECIAL ADVOCATE MAY MOVE TO THE ROLE OF PARENTING COORDINATOR

C. DUTIES OF THE SPECIAL ADVOCATE

6. THE SPECIAL ADVOCATE SHALL MAINTAIN COMPETENCE THROUGH TRAINING
7. THE SPECIAL ADVOCATE SHALL ACKNOWI EDGE WHEN AN ISSUE IS BEYOND HIS OR HER COMPETENCE
8. THE SPECIAL ADVOCATE SHALL COLLECT DATA AND CONDUCT AN INVESTIGATION SUFFICIENT TO ALLOW THE SPECIAL ADVOCATE TO PROVIDE COMPETENT OPINIONS
9. THE SPECIAL ADVOCATE SHALL HAVE AGE-APPROPRIATE COMMUNICATION WITH THE CHILD/REN INVOLVED
10. THE SPECIAL ADVOCATE SHALL REPORT CHILD ABUSE TO THE PROPER AGENCY AND THE COURT
11. THE SPECIAL ADVOCATE SHALL PREPARE A CLEAR AND TIMELY REPORT

12. THE SPECIAL ADVOCATE SHALL PROVIDE COPIES OF HIS OR HER FILES UPON REQUEST
13. THE SPECIAL ADVOCATE SHALL MAINTAIN CONFIDENTIALITY
14. THE SPECIAL ADVOCATE SHALL REQUEST TERMINATION OF THE APPOINTMENT WHEN PERMANENT OR POST-DECREE ORDERS ARE ENTERED

D. COMMUNICATIONS

15. THE SPECIAL ADVOCATE SHALL DEVELOP WRITTEN POLICIES FOR THE PARTIES
16. THE SPECIAL ADVOCATE SHALL DEVELOP WRITTEN POLICIES FOR COUNSEL
17. THE SPECIAL ADVOCATE SHALL REVIEW COURT ORDERS
18. THE SPECIAL ADVOCATE SHALL HAVE NO PRIVATE OR *EX PARTE* COMMUNICATION WITH THE COURT

****

STANDARD 12
THE SPECIAL ADVOCATE SHALL PROVIDE COPIES OF HIS OR HER FILE

The special advocate shall, if requested, make available to counsel or a party not represented by counsel in the case, his or her file of underlying data or reports.

COMMENT

A special advocate has an obligation to document and be prepared to make available all data that form the basis for his or her opinions and recommendations. The data to be disclosed includes all underlying data in the special advocate's file including the names and addresses of all persons with whom the special advocate has consulted, except that, if a special advocate believes that the release of any particular information or test data would endanger any person's welfare s/he should inform counsel and the court of his or her concerns and await further direction from the court before releasing the information in question.

STANDARD 13
THE SPECIAL ADVOCATE SHALL MAINTAIN CONFIDENTIALITY

The special advocate shall maintain the confidentiality of his or her file and report, and shall disclose either only to the appointing court and the parties and their counsel.

COMMENT

The special advocate report or underlying investigation materials shall not be disclosed in any proceeding other than the proceeding before the appointing court absent a court determination that the need for the information requested outweighs the need for privacy. A special advocate's report, and by implication a special advocate's underlying case file, "shall otherwise be considered confidential and shall be sealed and shall not be open to inspection, except by consent of the court." Section

14-10-126(2), C.R.S. Because a special advocate's report and file are court documents under seal, a special advocate has no authority to produce these sealed court documents pursuant to a subpoena duces tecum nor to disclose their contents absent consent and an order from the court.

****

IV. COURT'S AUTHORITY, ROLE AND RESPONSIBILITIES RELATED TO SPECIAL ADVOCATES APPOINTED PURSUANT TO 14-10-116

A. THE COURT SHALL ENSURE COMPLIANCE WITH THE SPECIAL ADVOCATE STANDARDS
B. THE COURT SHALL MAKE ITS ORDERS CLEAR
C. THE COURT SHALL ALLOCATE THE COSTS FOR SPECIAL ADVOCATES AND ENFORCE ITS PAYMENT ORDERS
D. THE COURT SHALL TIMELY TERMINATE THE SPECIAL ADVOCATE'S APPOINTMENT
E. THE COURT SHALL NOT APPOINT SPECIAL ADVOCATES TO INCONSISTENT DUAL ROLES
F. THE COURT SHALL ENSURE THE CONFIDENTIALITY OF SPECIAL ADVOCATE REPORTS

A. THE COURT SHALL ENSURE COMPLIANCE WITH THE SPECIAL ADVOCATE STANDARDS

The Court shall appoint a qualified special advocate and shall monitor any complaints concerning that person's services.

COMMENT

Children deserve to have parental responsibility proceedings conducted in the manner least harmful to them, and most likely to provide judges and magistrates with the facts needed to decide the case. Because the special advocate is the investigative arm of the court, it is the court's responsibility to ensure that the special advocate is qualified, and to monitor compliance with this Chief Justice Directive. If issues are raised concerning competency or any other concerns, the court should inquire and provide an opportunity to remedy any unethical or inappropriate conduct.

The court should hold periodic meetings with all practicing special advocates to clarify procedures and court expectations concerning special advocate investigations.

****

F. THE COURT SHALL ENSURE CONFIDENTIALITY OF SPECIAL ADVOCATE REPORTS

Because the report of a special advocate often contains otherwise private medical, psychological, substance abuse, or educational information, the court shall ensure its confidentiality and maintain it under seal.

COMMENT

Special advocates are appointed to gather information for the court's use in making decisions in the child/ren's best interest. It is unlikely to be in any child's best interest to have the private lives, failures, and foibles of his or her family spread across the public record. This is recognized by statute, section 14-10-126(2), C.R.S.. The court is also more likely to get complete and candid information if confidentiality is assured. Finally, this directive aids special advocates who can turn to the court for guidance when parties or lawyers outside of the DR case attempt to subpoena the highly personal information contained in their files and reports.

See the Comment under III.C. Standard 13.

Done at Denver, Colorado this 1st day of September, 2004.

/ s /
Mary J. Mullarkey,
Chief Justice

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

PAGE 2-**HOUSE BILL 05-1157**

unless such motion by either party is made for the purpose of delaying the proceedings. No later than January 1, 1990, Any court or social services department personnel appointed by the court to do such evaluation shall be qualified pursuant to subsection (4) of this section. When a mental health professional performs the evaluation, the court shall appoint or approve the selection of the mental health professional. The moving party shall, at the time of the appointment of the evaluator, deposit a reasonable sum with the court to pay the cost of the evaluation. The court may order the reasonable charge for such evaluation and report to be assessed as costs between the parties.

(I.5) A PARTY MAY REQUEST A SUPPLEMENTAL EVALUATION TO THE EVALUATION ORDERED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a). The court shall appoint another mental health professional to perform a THE supplemental evaluation at the initial expense of the

moving party.
The court shall not order a supplemental evaluation if it determines that any
of the following applies, based on motion and supporting affidavits:
(A) Such motion is interposed for purposes of delay;
(B) A party objects, and the party who objects or the child has a
physical or mental condition that would make it harmful for such party or
the child to participate in the supplemental evaluation;
(C) The purpose of such motion is to harass or oppress the other
party;
(D) The moving party has failed or refused to cooperate with the
first evaluation; or
(E) The weight of the evidence other than the evaluation concerning
the allocation of parental responsibilities or parenting time by the mental
health professional demonstrates that a second evaluation would not be of
benefit to the court in determining the allocation of parental responsibilities
and parenting time; OR
(F) IN ADDITION TO THE EVALUATION ORDERED PURSUANT TO
SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), THERE HAS BEEN AN
INVESTIGATION AND REPORT PREPARED BY A SPECIAL ADVOCATE PURSUANT
TO SECTION 14-10-116, AND THE COURT FINDS THAT A SUPPLEMENTAL
EVALUATION CONCERNING PARENTAL

RESPONSIBILITIES WILL NOT SERVE THE
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BEST INTERESTS OF THE CHILD.

(II) Each party and the child shall cooperate in the supplemental evaluation. If the court finds that the supplemental evaluation was necessary and materially assisted the court, the court may order the costs of such supplemental evaluation to be assessed as costs between the parties.

Except as otherwise provided in this section, such report shall be considered confidential and shall not be available for public inspection unless by order of court. The cost of each probation department or department of human services evaluation shall be based on an ability to pay and shall be assessed as part of the costs of the action or proceeding, and, upon receipt of such sum by the clerk of court, it shall be transmitted to the department or agency performing the evaluation.

SECTION 2. Safety clause. The general assembly hereby finds,

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determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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_____

Andrew Romanoff Joan Fitz-Gerald
SPEAKER OF THE HOUSE PRESIDENT OF
OF REPRESENTATIVES THE SENATE

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Marilyn Eddins Karen Goldman
CHIEF CLERK OF THE HOUSE SECRETARY OF
OF REPRESENTATIVES THE SENATE
APPROVED_____

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Bill Owens
GOVERNOR OF THE STATE OF COLORADO

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NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

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PARENTING PLAN. THE PARENTING COORDINATOR SHALL BE AN INDIVIDUAL WITH APPROPRIATE TRAINING AND QUALIFICATIONS AND A PERSPECTIVE ACCEPTABLE TO THE COURT.

(2) (a) ABSENT AGREEMENT OF THE PARTIES, A COURT SHALL NOT APPOINT A PARENTING COORDINATOR UNLESS THE COURT MAKES THE FOLLOWING FINDINGS:

(I) THAT THE PARTIES HAVE FAILED TO ADEQUATELY IMPLEMENT THE PARENTING PLAN;

(II) THAT MEDIATION HAS BEEN DETERMINED BY

THE COURT TO BE
INAPPROPRIATE, OR, IF NOT INAPPROPRIATE, THAT MEDIATION HAS BEEN
ATTEMPTED AND WAS UNSUCCESSFUL; AND
(III) THAT THE APPOINTMENT OF A PARENTING COORDINATOR IS IN
THE BEST INTERESTS OF THE CHILD OR CHILDREN INVOLVED IN THE
PARENTING PLAN.
(b) IN ADDITION TO MAKING THE FINDINGS REQUIRED PURSUANT TO
PARAGRAPH (a) OF THIS SUBSECTION (2), PRIOR TO APPOINTING A PARENTING
COORDINATOR, THE COURT SHALL CONSIDER THE EFFECT OF ANY
DOCUMENTED EVIDENCE OF DOMESTIC VIOLENCE ON THE PARTIES' ABILITY
TO ENGAGE IN PARENT COORDINATION.
(3) A PARENTING COORDINATOR SHALL ASSIST THE PARTIES IN
IMPLEMENTING THE TERMS OF THE PARENTING PLAN. DUTIES OF A
PARENTING COORDINATOR INCLUDE, BUT ARE NOT LIMITED TO, THE
FOLLOWING:
(a) ASSISTING THE PARTIES IN CREATING AN AGREED-UPON,
STRUCTURED GUIDELINE FOR IMPLEMENTATION OF THE PARENTING PLAN;
(b) DEVELOPING GUIDELINES FOR COMMUNICATION BETWEEN THE
PARTIES AND SUGGESTING APPROPRIATE RESOURCES TO ASSIST THE PARTIES
IN LEARNING APPROPRIATE COMMUNICATION SKILLS;

(c) INFORMING THE PARTIES ABOUT APPROPRIATE RESOURCES TO
ASSIST THEM IN DEVELOPING IMPROVED PARENTING SKILLS;
(d) ASSISTING THE PARTIES IN REALISTICALLY IDENTIFYING THE
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SOURCES AND CAUSES OF CONFLICT BETWEEN THEM, INCLUDING BUT NOT
LIMITED TO IDENTIFYING EACH PARTY'S CONTRIBUTION TO THE CONFLICT,
WHEN APPROPRIATE; AND
(e) ASSISTING THE PARTIES IN DEVELOPING PARENTING STRATEGIES
TO MINIMIZE CONFLICT.
(4) (a) THE COURT MAY NOT APPOINT A PERSON PURSUANT TO THIS
SECTION TO SERVE IN A CASE AS A PARENTING COORDINATOR IF THE PERSON
HAS SERVED OR IS SERVING IN THE SAME CASE AS AN EVALUATOR PURSUANT
TO SECTION 14-10-127 OR A REPRESENTATIVE OF THE CHILD PURSUANT TO
SECTION 14-10-116. AFTER APPOINTING A PERSON PURSUANT TO THIS
SECTION TO SERVE AS A PARENTING COORDINATOR IN A CASE, THE COURT
MAY NOT SUBSEQUENTLY APPOINT THE PERSON TO SERVE IN THE SAME CASE
AS AN EVALUATOR PURSUANT TO SECTION 14-10-127 OR A REPRESENTATIVE
OF THE CHILD PURSUANT TO SECTION14-10-116.
(b) THE COURT MAY APPOINT A PERSON WHO HAS SERVED OR IS
SERVING IN A CASE AS A SPECIAL ADVOCATE

PURSUANT TO SECTION
14-10-116 TO SERVE IN THE SAME CASE AS THE PARENTING COORDINATOR,
UPON THE AGREEMENT OF THE PARTIES. AFTER APPOINTING A PERSON
PURSUANT TO THIS SECTION TO SERVE AS A PARENTING COORDINATOR IN A
CASE, THE COURT MAY NOT SUBSEQUENTLY APPOINT THE PERSON TO SERVE
AS A SPECIAL ADVOCATE IN THE SAME CASE PURSUANT TO SECTION
14-10-116.

(5) A COURT ORDER APPOINTING A PARENTING COORDINATOR SHALL
BE FOR A SPECIFIED TERM; EXCEPT THAT THE COURT ORDER SHALL NOT
APPOINT A PARENTING COORDINATOR FOR A PERIOD OF LONGER THAN TWO
YEARS. IF AN ORDER FAILS TO SPECIFY THE LENGTH OF THE COURT-ORDERED
APPOINTMENT, IT SHALL BE CONSTRUED TO BE TWO YEARS FROM THE DATE
OF APPOINTMENT. UPON AGREEMENT OF THE PARTIES, THE COURT MAY
EXTEND, MODIFY, OR TERMINATE THE APPOINTMENT, INCLUDING EXTENDING
THE APPOINTMENT BEYOND TWO YEARS FROM THE DATE OF THE ORIGINAL
APPOINTMENT. THE COURT MAY TERMINATE THE APPOINTMENT OF THE
PARENTING COORDINATOR AT ANY TIME FOR GOOD CAUSE. THE COURT
SHALL ALLOW THE PARENTING COORDINATOR TO WITHDRAW AT ANY TIME.

(6) A COURT ORDER APPOINTING A PARENTING

COORDINATOR SHALL
INCLUDE APPORTIONMENT OF THE RESPONSIBILI . Y FOR PAYMENT OF ALL OF
THE PARENTING COORDINATOR'S FEES BETWEEN THE PARTIES. THE STATE
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SHALL NOT BE RESPONSIBLE FOR PAYMENT OF FEES TO A PARENTING
COORDINATOR APPOINTED PURSUANT TO THIS SECTION.
(7) IN A JUDICIAL PROCEEDING, ADMINISTRATIVE PROCEEDING, OR
OTHER SIMILAR PROCEEDING BETWEEN THE PARTIES TO THE ACTION, A
PARENTING COORDINATOR SHALL NOT BE COMPETENT TO TESTIFY AND MAY
NOT BE REQUIRED TO PRODUCE RECORDS AS TO ANY STATEMENT, CONDUCT,
OR DECISION, THAT OCCURRED DURING THE PARENTING COORDINATOR'S
APPOINTMENT, TO THE SAME EXTENT AS A JUDGE OF A COURT OF THIS STATE
ACTING IN A JUDICIAL CAPACITY. NOTHING IN THIS SUBSECTION (7) SHALL
BE CONSTRUED TO PROHIBIT A PARENTING COORDINATOR FROM TESTIFYING
OR PRODUCING RECORDS TO THE EXTENT TESTIMONY OR PRODUCTION OF
RECORDS BY THE PARENTING COORDINATOR IS NECESSARY IN AN ACTION BY
THE PARENTING COORDINATOR TO COLLECT FEES FROM A PARTY TO THE
ACTION.
(8) THE PARENTING COORDINATOR SHALL COMPLY WITH ANY

APPLICABLE PROVISIONS SET FORTH IN CHIEF JUSTICE DIRECTIVES AND ANY
OTHER PRACTICE OR ETHICAL STANDARDS ESTABLISHED BY RULE, STATUTE,
OR LICENSING BOARD THAT REGULATES THE PARENTING COORDINATOR.

14-10-128.3. Appointment of decision-maker. (1) IN ADDITION TO
THE APPOINTMENT OF A PARENTING COORDINATOR PURSUANT TO SECTION
14-10-128.1 OR AN ARBITRATOR PURSUANT TO SECTION 14-10-128.5, AT ANY
TIME AFTER THE ENTRY OF AN ORDER CONCERNING PARENTAL
RESPONSIBILITIES AND UPON WRITTEN CONSENT OF BOTH PARTIES, THE
COURT MAY APPOINT A QUALIFIED DOMESTIC RELATIONS DECISION-MAKER
AND GRANT TO THE DECISION-MAKER BINDING AUTHORITY TO RESOLVE
DISPUTES BETWEEN THE PARTIES AS TO IMPLEMENTATION OR CLARIFICATION
OF EXISTING ORDERS CONCERNING THE PARTIES' MINOR OR DEPENDENT
CHILDREN, INCLUDING BUT NOT LIMITED TO DISPUTES CONCERNING
PARENTING TIME, SPECIFIC DISPUTED PARENTAL DECISIONS, AND CHILD
SUPPORT. A DECISION-MAKER SHALL HAVE THE AUTHORITY TO MAKE
BINDING DETERMINATIONS TO IMPLEMENT OR CLARIFY THE PROVISIONS OF
A PRE-EXISTING COURT ORDER IN A MANNER THAT IS CONSISTENT WITH THE
SUBSTANTIVE INTENT OF THE COURT ORDER. THE

DECISION-MAKER
APPOINTED PURSUANT TO THE PROVISIONS OF THIS SECTION MAY BE THE
SAME PERSON AS THE PARENTING COORDINATOR APPOINTED PURSUANT TO
SECTION 14-10-128.1.
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(2) THE DECISION-MAKER'S PROCEDURES FOR MAKING
DETERMINATIONS SHALL BE IN WRITING AND SHALL BE APPROVED BY THE
PARTIES PRIOR TO THE TIME THE DECISION-MAKER BEGINS TO RESOLVE A
DISPUTE OF THE PARTIES. IF A PARTY IS UNABLE OR UNWILLING TO AGREE TO
THE DECISION-MAKER'S PROCEDURES, THE DECISION-MAKER SHALL BE
ALLOWED TO WITHDRAW FROM THE MATTER.
(3) ALL DECISIONS MADE BY THE DECISION-MAKER PURSUANT TO
THIS SECTION SHALL BE IN WRITING, DATED, AND SIGNED BY THE
DECISION-MAKER. DECISIONS OF THE DECISION-MAKER SHALL BE FILED WITH
THE COURT AND MAILED TO THE PARTIES OR TO COUNSEL FOR THE PARTIES,
IF ANY, NO LATER THAN TWENTY DAYS AFTER THE DATE THE DECISION IS
ISSUED. ALL DECISIONS SHALL BE EFFECTIVE IMMEDIATELY UPON ISSUANCE
AND SHALL CONTINUE IN EFFECT UNTIL VACATED, CORRECTED, OR MODIFIED
BY THE DECISION-MAKER OR UNTIL AN ORDER IS ENTERED BY A COURT
PURSUANT TO A DE NOVO HEARING UNDER

SUBSECTION (4) OF THIS SECTION.
(4) (a) A PARTY MAY FILE A MOTION WITH THE COURT REQUESTING
THAT A DECISION OF THE DECISION-MAKER BE MODIFIED BY THE COURT
PURSUANT TO A DE NOVO HEARING. A MOTION FOR A DE NOVO HEARING
SHALL BE FILED NO LATER THAN THIRTY DAYS AFTER THE DATE THE DECISION
IS ISSUED PURSUANT TO SUBSECTION (3) OF THIS SECTION.
(b) IF A COURT, IN ITS DISCRETION BASED ON THE PLEADINGS FILED,
GRANTS A PARTY'S REQUEST FOR A DE NOVO HEARING TO MODIFY THE
DECISION OF THE DECISION-MAKER AND THE COURT SUBSTANTIALLY
UPHOLDS THE DECISION OF THE DECISION-MAKER, THE PARTY THAT
REQUESTED THE DE NOVO HEARING SHALL PAY THE FEES AND COSTS OF THE
OTHER PARTY AND SHALL PAY THE FEES AND COSTS INCURRED BY THE
DECISION-MAKER IN CONNECTION WITH THE REQUEST FOR DE NOVO
HEARING, UNLESS THE COURT FINDS THAT IT WOULD BE MANIFESTLY UNJUST.
(5) A COURT ORDER APPOINTING A DECISION-MAKER SHALL BE FOR
A SPECIFIED TERM; EXCEPT THAT THE COURT ORDER SHALL NOT APPOINT A
DECISION-MAKER FOR A PERIOD OF LONGER THAN TWO YEARS. IF AN ORDER
FAILS TO SPECIFY THE LENGTH OF THE COURT-ORDERED APPOINTMENT, IT

SHALL BE CONSTRUED TO BE TWO YEARS FROM THE DATE OF APPOINTMENT.
UPON AGREEMENT OF THE PARTIES, THE COURT MAY EXTEND, MODIFY, OR
TERMINATE THE APPOINTMENT, INCLUDING EXTENDING THE APPOINTMENT
BEYOND TWO YEARS FROM THE DATE OF THE ORIGINAL APPOINTMENT. THE
COURT MAY TERMINATE THE APPOINTMENT OF THE DECISION-MAKER AT ANY
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TIME FOR GOOD CAUSE. THE COURT SHALL ALLOW THE DECISION-MAKER TO
WITHDRAW AT ANY TIME.
(6) A COURT ORDER APPOINTING A DECISION-MAKER SHALL INCLUDE
APPORTIONMENT OF THE RESPONSIBILITY FOR PAYMENT OF ALL OF THE
DECISION-MAKER'S FEES BETWEEN THE PARTIES. THE STATE SHALL NOT BE
RESPONSIBLE FOR PAYMENT OF FEES TO A DECISION-MAKER APPOINTED
PURSUANT TO THIS SECTION.
(7) (a) A DECISION-MAKER SHALL BE IMMUNE FROM LIABILITY IN ANY
CLAIM FOR INJURY THAT ARISES OUT OF AN ACT OR OMISSION OF THE
DECISION-MAKER OCCURRING DURING THE PERFORMANCE OF HIS OR HER
DUTIES OR DURING THE PERFORMANCE OF AN ACT THAT THE
DECISION-MAKER REASONABLY BELIEVED WAS WITHIN THE SCOPE OF HIS OR
HER DUTIES UNLESS THE ACT OR OMISSION CAUSING SUCH INJURY WAS

WILLFUL AND WANTON.
(b) NOTHING IN THIS SUBSECTION (7) SHALL BE CONSTRUED TO BAR
A PARTY FROM ASSERTING A CLAIM RELATED TO THE REASONABLENESS OR
ACCURACY OF ANY FEE CHARGED OR TIME BILLED BY A DECISION-MAKER.
(c) (I) IN A JUDICIAL PROCEEDING, ADMINISTRATIVE PROCEEDING, OR
OTHER SIMILAR PROCEEDING, A DECISION-MAKER SHALL NOT BE COMPETENT
TO TESTIFY AND MAY NOT BE REQUIRED TO PRODUCE RECORDS AS TO ANY
STATEMENT, CONDUCT, OR DECISION, THAT OCCURRED DURING THE
DECISION-MAKER'S APPOINTMENT, TO THE SAME EXTENT AS A JUDGE OF A
COURT OF THIS STATE ACTING IN A JUDICIAL CAPACITY.
(II) THIS PARAGRAPH (c) SHALL NOT APPLY:
(A) TO THE EXTENT TESTIMONY OR PRODUCTION OF RECORDS BY THE
DECISION-MAKER IS NECESSARY TO DETERMINE THE CLAIM OF THE
DECISION-MAKER AGAINST A PARTY; OR
(B) TO THE EXTENT TESTIMONY OR PRODUCTION OF RECORDS BY THE
DECISION-MAKER IS NECESSARY TO DETERMINE A CLAIM OF A PARTY AGAINST
A DECISION-MAKER; OR
(C) WHEN BOTH PARTIES HAVE AGREED, IN WRITING, TO AUTHORIZE
THE DECISION-MAKER TO TESTIFY.
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(d) IF A PERSON COMMENCES A CIVIL ACTION

AGAINST A
DECISION-MAKER ARISING FROM THE SERVICES OF THE DECISION-MAKER, OR
IF A PERSON SEEKS TO COMPEL A DECISION-MAKER TO TESTIFY OR PRODUCE
RECORDS IN VIOLATION OF PARAGRAPH (c) OF THIS SUBSECTION (7), AND THE
COURT DECIDES THAT THE DECISION-MAKER IS IMMUNE FROM CIVIL
LIABILITY OR THAT THE DECISION-MAKER IS NOT COMPETENT TO TESTIFY,
THE COURT SHALL AWARD TO THE DECISION-MAKER REASONABLE ATTORNEY
FEES AND REASONABLE EXPENSES OF LITIGATION.
(8) THE DECISION-MAKER SHALL COMPLY WITH ANY APPLICABLE
PROVISIONS SET FORTH IN CHIEF JUSTICE DIRECTIVES AND ANY OTHER
PRACTICE OR ETHICAL STANDARDS ESTABLISHED BY RULE, STATUTE, OR
LICENSING BOARD THAT REGULATES THE DECISION-MAKER.

SECTION 2. 14-10-128.5, Colorado Revised Statutes, is amended
to read:

14-10-128.5. Appointment of arbitrator - de novo review of
award. (1) With the consent of all parties, the court may appoint an
arbitrator to resolve disputes between the parties concerning the parties'
minor or dependent children, including but not limited to parenting time,
nonrecurring adjustments to child support, and disputed parental decisions.

Notwithstanding any other provision of law to the contrary, all awards
entered by an arbitrator appointed pursuant to this section shall be in
writing. The arbitrator's award shall be effective immediately upon entry
and shall continue in effect until vacated by the arbitrator pursuant to part
2 of article 22 of title 13, C.R.S., modified or corrected by the arbitrator
pursuant to part 2 of article 22 of title 13, C.R.S., or modified by the court
pursuant to a de novo review HEARING under subsection (2) of this section.

(2) Any party may apply to have the arbitrator's award vacated,
modified, or corrected pursuant to part 2 of article 22 of title 13, C.R.S., or
may move the court to modify the arbitrator's award pursuant to a de novo
review of HEARING CONCERNING such award BY FILING A MOTION FOR
HEARING NO LATER THAN THIRTY DAYS AFTER THE DATE OF THE AWARD. In
circumstances in which a party moves for a de novo review HEARING by the
court, the court shall order the nonprevailing party IF THE COURT, IN ITS
DISCRETION BASED ON THE PLEADINGS FILED, GRANTS THE MOTION AND THE
COURT SUBSTANTIALLY UPHOLDS THE DECISION OF THE ARBITRATOR, THE
PARTY THAT REQUESTED THE DE NOVO HEARING SHALL BE ORDERED to pay
the fees and costs of the prevailing OTHER party and the

fees of the
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arbitrator incurred in responding to the application or motion unless the
court finds that it would be manifestly unjust.

SECTION 3. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate
preservation of the public peace, health, and safety.

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_____

Andrew Romanoff Joan Fitz-Gerald
SPEAKER OF THE HOUSE PRESIDENT OF
OF REPRESENTATIVES THE SENATE

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Marilyn Eddins Karen Goldman
CHIEF CLERK OF THE HOUSE SECRETARY OF
OF REPRESENTATIVES THE SENATE
APPROVED_____

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Bill Owens
GOVERNOR OF THE STATE OF COLORADO

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**NOTE: This bill has been prepared for the signature of the appropriate legislative
officers and the Governor. To determine whether the Governor has signed the bill
or taken other action on it, please consult the legislative status sheet, the legislative
history, or the Session Laws.**

(1) The court may, upon the motion of either party or upon its own motion,
appoint an individual for the parties' minor or dependent children or to
assist the court AN ATTORNEY, IN GOOD STANDING AND LICENSED TO
PRACTICE LAW IN THE STATE OF COLORADO, TO SERVE AS THE LEGAL
REPRESENTATIVE OF THE CHILD, REPRESENTING THE BEST INTERESTS OF THE
CHILD in any domestic relations proceeding pursuant to subsection (2) of
this section. The court shall set forth the duties of such individual in a
written order of appointment, which order shall include a requirement that
any attorney appointed pursuant to this section to serve as either a
representative of the child or as a special advocate shall comply with the
applicable provisions set forth in the chief justice directive 97-02,
concerning the court appointment of guardians ad litem and other
representatives and of counsel for children and indigent persons in titles 14,
15, 19 (dependency and neglect only), 22, and 27, C.R.S., and any
subsequent chief justice directive or other practice standards established by
rule or directive of the chief justice pursuant to section 13-91-105 (1) (a),
C.R.S., concerning the duties or responsibilities of guardians ad litem and

special advocates in legal matters affecting children THAT INVOLVES
ALLOCATION OF PARENTAL RESPONSIBILITIES. In no instance may the same
person serve as both the child's LEGAL representative pursuant to paragraph
(a) of subsection (2) of this section and as the special advocate CHILD AND
FAMILY INVESTIGATOR FOR THE COURT pursuant to paragraph (b) of
subsection (2) of this section SECTION 14-10-116.5.
(2) The court may appoint either or both of the following:
(a) An individual to serve as a representative of the child. The
individual shall be an attorney. The individual THE LEGAL
REPRESENTATIVE OF THE CHILD, APPOINTED PURSUANT TO SUBSECTION (1)
OF THIS SECTION, shall represent the best interests of the minor or dependent
child, as that term is described in section 14-10-124, with respect to the
child's custody, the allocation of parental responsibilities, support for the
child, the child's property, parenting time, or any other issue related to the
child that is identified in the court's order of appointment BY THE LEGAL
REPRESENTATIVE OF THE CHILD OR THE APPOINTING COURT. The individual
appointed LEGAL REPRESENTATIVE OF THE CHILD shall actively participate
in all aspects of the case involving the child, within the bounds of the law.
Such attorney THE LEGAL REPRESENTATIVE OF THE CHILD SHALL COMPLY

WITH THE PROVISIONS SET FORTH IN THE COLORADO RULES OF PROFESSIONAL
CONDUCT AND ANY APPLICABLE PROVISIONS SET FORTH IN CHIEF JUSTICE
DIRECTIVES OR OTHER PRACTICE STANDARDS ESTABLISHED BY RULE OR
PAGE 3-HOUSE BILL 05-1172
DIRECTIVE OF THE CHIEF JUSTICE PURSUANT TO SECTION 13-91-105 (1) (c),
C.R.S., CONCERNING THE DUTIES OR RESPONSIBILITIES OF BEST INTEREST
REPRESENTATION IN LEGAL MATTERS AFFECTING CHILDREN. THE LEGAL
REPRESENTATIVE OF THE CHILD shall not be called as a witness in the case.
WHILE THE LEGAL REPRESENTATIVE OF THE CHILD SHALL ASCERTAIN AND
CONSIDER THE WISHES OF THE CHILD, THE LEGAL REPRESENTATIVE OF THE
CHILD IS NOT REQUIRED TO ADOPT THE CHILD'S WISHES IN HIS OR HER
RECOMMENDATION OR ADVOCACY FOR THE CHILD UNLESS SUCH WISHES
SERVE THE CHILD'S BEST INTEREST AS DESCRIBED IN SECTION 14-10-124.

(b) An individual to serve as a special advocate. The special advocate may be, but need not be, an attorney. The special advocate shall
investigate, report, and make recommendations on any issues that affect or
may affect the best interests of the minor or dependent child as that term is
described in section 14-10-124. The subject matter and scope of the special
advocate's duties shall be clearly set forth in the court's order

of
appointment. Such duties shall include the requirement that the special
advocate file a written report with the court. The special advocate shall
make independent and informed recommendations to the court. While the
special advocate shall consider the wishes of the child, the special advocate
need not adopt such wishes in making his or her recommendations to the
court unless they serve the child's best interests as described in section
14-10-124. The child's wishes, if expressed, shall be disclosed in the
special advocate's report. The special advocate may be called to testify as
a witness regarding his or her recommendations.

(3) The court shall enter an order for costs, fees, and disbursements
in favor of the child's LEGAL representative appointed pursuant to paragraph
(a) of subsection (2) (1) of this section. or in favor of the special advocate
appointed pursuant to paragraph (b) of subsection (2) of this section or
both. The order shall be made against any or all of the parties; except that,
if the responsible party is indigent, the costs, fees, and disbursements shall
be borne by the state.

SECTION 3. Legislative declaration. The general assembly hereby finds and declares that, due to the need to continue to encourage
court appointments of persons to serve the best interests of

children in
domestic relations proceedings involving the allocation of parental
responsibilities, it is the intent of the general assembly that quasi-judicial
immunity continue to be granted for a child and family investigator acting
within the course and scope of an order of appointment pursuant to existing
PAGE 4-HOUSE BILL 05-1172
Colorado case law.

SECTION 4. Article 10 of title 14, Colorado Revised Statutes, is
amended BY THE ADDITION OF A NEW SECTION to read:

**14-10-116.5. Appointment in domestic relations cases - child and
family investigator.** (1) THE COURT MAY, UPON THE MOTION OF EITHER
PARTY OR UPON ITS OWN MOTION, APPOINT AN INDIVIDUAL TO SERVE THE
COURT AS A CHILD AND FAMILY INVESTIGATOR PURSUANT TO SUBSECTION (2)
OF THIS SECTION IN A DOMESTIC RELATIONS PROCEEDING THAT INVOLVES
ALLOCATION OF PARENTAL RESPONSIBILITIES. THE COURT SHALL SET FORTH
THE SPECIFIC DUTIES OF THE CHILD AND FAMILY INVESTIGATOR IN A WRITTEN
ORDER OF APPOINTMENT. THE SAME PERSON MAY NOT SERVE AS BOTH THE
LEGAL REPRESENTATIVE OF THE CHILD PURSUANT TO SECTION 14-10-116
AND AS THE CHILD AND FAMILY INVESTIGATOR FOR THE COURT PURSUANT TO

THIS SECTION.
(2) A CHILD AND FAMILY INVESTIGATOR APPOINTED BY THE COURT
MAY BE AN ATTORNEY, A MENTAL HEALTH PROFESSIONAL, OR ANY OTHER
INDIVIDUAL WITH APPROPRIATE TRAINING, QUALIFICATIONS, AND AN
INDEPENDENT PERSPECTIVE ACCEPTABLE TO THE COURT. THE CHILD AND
FAMILY INVESTIGATOR FOR THE COURT SHALL INVESTIGATE, REPORT, AND
MAKE RECOMMENDATIONS AS SPECIFICALLY DIRECTED BY THE COURT IN THE
APPOINTMENT ORDER, TAKING INTO CONSIDERATION THE RELEVANT FACTORS
FOR DETERMINING THE BEST INTERESTS OF THE CHILD AS SPECIFIED IN
SECTION 14-10-124. THE CHILD AND FAMILY INVESTIGATOR SHALL MAKE
INDEPENDENT AND INFORMED RECOMMENDATIONS TO THE COURT, IN THE
FORM OF A WRITTEN REPORT FILED WITH THE COURT, UNLESS OTHERWISE
ORDERED BY THE COURT. WHILE THE CHILD AND FAMILY INVESTIGATOR
SHALL CONSIDER THE WISHES OF THE CHILD, THE CHILD AND FAMILY
INVESTIGATOR NEED NOT ADOPT SUCH WISHES IN MAKING HIS OR HER
RECOMMENDATIONS TO THE COURT UNLESS THEY SERVE THE CHILD'S BEST
INTERESTS AS DESCRIBED IN SECTION 14-10-124. THE CHILD'S WISHES, IF
EXPRESSED, SHALL BE DISCLOSED IN THE CHILD AND FAMILY INVESTIGATOR'S

WRITTEN REPORT. THE CHILD AND FAMILY INVESTIGATOR MAY BE CALLED
TO TESTIFY AS A WITNESS REGARDING HIS OR HER RECOMMENDATIONS. THE
CHILD AND FAMILY INVESTIGATOR SHALL COMPLY WITH APPLICABLE
PROVISIONS SET FORTH IN CHIEF JUSTICE DIRECTIVES, AND ANY OTHER
PRACTICE OR ETHICAL STANDARDS ESTABLISHED BY RULE, STATUTE, OR
LICENSING BOARD THAT REGULATES THE CHILD AND FAMILY INVESTIGATOR.
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(3) THE COURT SHALL ENTER AN ORDER FOR COSTS, FEES, AND
DISBURSEMENTS IN FAVOR OF THE CHILD AND FAMILY INVESTIGATOR
APPOINTED PURSUANT TO SUBSECTION (1) OF THIS SECTION. THE ORDER
SHALL BE MADE AGAINST ANY OR ALL OF THE PARTIES; EXCEPT THAT, IF THE
RESPONSIBLE PARTY IS INDIGENT, THE COSTS, FEES, AND DISBURSEMENTS
SHALL BE BORNE BY THE STATE.

SECTION 5. 13-91-105 (1) (c), Colorado Revised Statutes, is
amended to read:

13-91-105. Duties of the office of the child's representative - guardian ad litem programs - CASA programs. (1) In addition to any
responsibilities assigned to it by the chief justice, the office of the child's
representative shall:

(c) Enhance the provision of services in Colorado by

attorneys
appointed to serve as LEGAL representatives of children pursuant to section
14-10-116, (2), C.R.S., AND ATTORNEYS APPOINTED TO SERVE AS CHILD AND
FAMILY INVESTIGATORS PURSUANT TO SECTION 14-10-116.5, C.R.S., WHEN
THE COSTS OF SUCH APPOINTMENTS ARE BORNE BY THE STATE, by:

(I) Ensuring the provision and availability of high-quality, accessible training throughout the state for attorneys seeking to serve as
LEGAL representatives of children, AND ATTORNEYS SEEKING TO SERVE AS
CHILD AND FAMILY INVESTIGATORS, as well as to judges and magistrates
who regularly hear domestic matters under article 10 of title 14, C.R.S.;

(II) Making recommendations to the chief justice concerning the
establishment, by rule or chief justice directive, of the minimum training
requirements that an attorney seeking to serve as a LEGAL representative of
a child AND AN ATTORNEY SEEKING TO SERVE AS A CHILD AND FAMILY
INVESTIGATOR shall meet;

(III) Making recommendations to the chief justice concerning the
establishment, by rule or chief justice directive, of standards to which
attorneys serving as LEGAL representatives of children AND ATTORNEYS
SERVING AS CHILD AND FAMILY INVESTIGATORS shall be held;

(IV) Overseeing the practice of LEGAL representatives of children
appointed pursuant to section 14-10-116, C.R.S., AND OVERSEEING THE
PRACTICE OF ATTORNEYS SERVING AS CHILD AND FAMILY INVESTIGATORS
PAGE 6-HOUSE BILL 05-1172
APPOINTED PURSUANT TO SECTION 14-10-116.5, C.R.S., to ensure
compliance with all relevant statutes, orders, rules, directives, policies, and
procedures;
(V) Seeking to enhance existing funding sources for and studying
the availability of or developing new funding sources for the provision of
services by ATTORNEYS SERVING AS court-appointed LEGAL representatives
of children AND ATTORNEYS SERVING AS COURT-APPOINTED CHILD AND
FAMILY INVESTIGATORS;
(VI) Effective July 1, 2001, allocating moneys appropriated to the
office of the child's representative in the state judicial department for the
provision of services by ATTORNEYS SERVING AS court-appointed LEGAL
representatives of children AND ATTORNEYS SERVING AS COURT-APPOINTED
CHILD AND FAMILY INVESTIGATORS;
SECTION 6. 14-10-124 (1.5) (b) (IV) and (1.5) (b) (V), Colorado
Revised Statutes, are amended to read:
14-10-124. Best interests of child. (1.5) **Allocation of parental**

responsibilities. The court shall determine the allocation of parental
responsibilities, including parenting time and decision-making
responsibilities, in accordance with the best interests of the child giving
paramount consideration to the physical, mental, and emotional conditions
and needs of the child as follows:

(b) **Allocation of decision-making responsibility.** The court, upon
the motion of either party or its own motion, shall allocate the
decision-making responsibilities between the parties based upon the best
interests of the child. In determining decision-making responsibility, the
court may allocate the decision-making responsibility with respect to each
issue affecting the child mutually between both parties or individually to
one or the other party or any combination thereof. In determining the best
interests of the child for purposes of allocating decision-making
responsibilities, the court shall consider, in addition to the factors set forth
in paragraph (a) of this subsection (1.5), all relevant factors including:

(IV) Whether one of the parties has been a perpetrator of child
abuse or neglect under section 18-6-401, C.R.S., or under the law of any
state, which factor shall be supported by credible evidence. If the court

makes a finding of fact that one of the parties has been a perpetrator of
PAGE 7-HOUSE BILL 05-1172
child abuse or neglect, then it shall not be in the best interests of the child
to allocate mutual decision-making with respect to any issue over the
objection of the other party or the LEGAL representative of the child.
(V) Whether one of the parties has been a perpetrator of spouse
abuse as defined in subsection (4) of this section, which factor shall be
supported by credible evidence. If the court makes a finding of fact that
one of the parties has been a perpetrator of spouse abuse, then it shall not
be in the best interests of the child to allocate mutual decision-making
responsibility over the objection of the other party or the LEGAL
representative of the child, unless the court finds that the parties are able to
make shared decisions about their children without physical confrontation
and in a place and manner that is not a danger to the abused party or the
child.
SECTION 7. 14-13-111 (1), Colorado Revised Statutes, is amended
to read:
14-13-111. Taking testimony in another state. (1) In addition to
other procedures available to a party, a party to a child-custody proceeding

or a guardian ad litem or other LEGAL representative of the child may offer
testimony of witnesses who are located in another state, including testimony
of the parties and the child, by deposition or other means allowable in this
state for testimony taken in another state. The court on its own motion may
order that the testimony of a person be taken in another state and may
prescribe the manner in which and the terms upon which the testimony is
taken.

SECTION 8. 13-91-104 (2) (a), Colorado Revised Statutes, is
amended to read:

13-91-104. Office of the child's representative - board - qualifications of director. (2) (a) The Colorado supreme court shall
appoint a nine-member child's representative board, referred to in this
article as the "board". No more than five members of the board shall be
from the same political party. The members of the board shall be
representative of each of the congressional districts in the state. Three
members of the board shall be attorneys admitted to practice law in this
state who have experience in representing children as guardians ad litem or
as legal representatives of children. Three members of the board shall be

citizens of Colorado not admitted to practice law in this state,

who shall
have experience at advocating for children in the court system. Three
members of the board shall be citizens of the state who are not attorneys
and who have not served as CASA volunteers or special advocates CHILD
AND FAMILY INVESTIGATORS.

SECTION 9. 19-3-304 (2) (ee), Colorado Revised Statutes, as
enacted by Senate Bill 05-004, enacted at the First Regular Session of the
Sixty-fifth General Assembly, is amended to read:

19-3-304. Persons required to report child abuse or neglect.

(2) Persons required to report such abuse or neglect or circumstances or
conditions shall include any:

(ee) Special advocates CHILD AND FAMILY INVESTIGATORS, as
described in section 14-10-116 (2) (b) 14-10-116.5, C.R.S.

SECTION 10. 14-10-127 (1) (a) (I.5) (F), Colorado Revised Statutes, as enacted by House Bill 05-1157, enacted at the First Regular
Session of the Sixty-fifth General Assembly, is amended to read:

14-10-127. Evaluation and reports. (1) (a) (I.5) A party may
request a supplemental evaluation to the evaluation ordered pursuant to
subparagraph (I) of this paragraph (a). The court shall appoint another
mental health professional to perform the supplemental evaluation at the
initial expense of the moving party. The court shall not order

a
supplemental evaluation if it determines that any of the following applies,
based on motion and supporting affidavits:
(F) In addition to the evaluation ordered pursuant to subparagraph
(I) of this paragraph (a), there has been an investigation and report prepared
by a special advocate CHILD AND FAMILY INVESTIGATOR pursuant to section
14-10-116 14-10-116.5, and the court finds that a supplemental evaluation
concerning parental responsibilities will not serve the best interests of the
child.

SECTION 11. 14-10-128.1 (4) (b), Colorado Revised Statutes, as
enacted by House Bill 05-1171, enacted at the First Regular Session of the
Sixty-fifth General Assembly, is amended to read:

14-10-128.1. Appointment of parenting coordinator. (4) (b) The
court may appoint a person who has served or is serving in a case as a
special advocate CHILD AND FAMILY INVESTIGATOR pursuant to section
14-10-116 14-10-116.5 to serve in the same case as the parenting
coordinator, upon the agreement of the parties. After appointing a person
pursuant to this section to serve as a parenting coordinator in a case, the
court may not subsequently appoint the person to serve as a special

advocate CHILD AND FAMILY INVESTIGATOR in the same case pursuant to
section 14-10-116 14-10-116.5.

SECTION 12. Effective date. (1) This act shall take effect July 1,
2005, except that:

(a) Section 10 of this act, amending section 14-10-127 (1) (a) (I.5)
(F), Colorado Revised Statutes, shall take effect only if House Bill 05-1157
is enacted at the First Regular Session of the Sixty-fifth General Assembly
and becomes law; and

(b) Section 11 of this act, amending section 14-10-128.1 (4) (b),
Colorado Revised Statutes, shall take effect only if House Bill 05-1171 is
enacted at the First Regular Session of the Sixty-fifth General Assembly
and becomes law.

SECTION 13. Safety clause. The general assembly hereby finds,
PAGE 10-HOUSE BILL 05-1172
determines, and declares that this act is necessary for the immediate
preservation of the public peace, health, and safety.

_____

_____

Andrew Romanoff Joan Fitz-Gerald
SPEAKER OF THE HOUSE PRESIDENT OF
OF REPRESENTATIVES THE SENATE

_____

_____

Marilyn Eddins Karen Goldman
CHIEF CLERK OF THE HOUSE SECRETARY OF

OF REPRESENTATIVES THE SENATE
APPROVED_____

_____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO

05-12-2005 12:37 From – King Soopers #29 3038307635
T-034 P.001/006 F-774

FACSIMILE COVER SHEET

[stamp indicates "Date Cancelled 05 MAY 12 PM 4:01"]

Clerk's Office telephone number: 303-663-7200

1. Date of transmission: May 12, 2005

2. Name of *pro se* party making the transmission: Troy Schwiegerath

Facsimile number: 303-688-1962
Telephone number: 303-933-2154

3. Case number, caption and title of pleading or paper:
Caption: In Re Marriage of:

Petition: DAWNA SCHWIEGERATH

Respondent: TROY SCHWIEGERATH

RESPONDENT'S OBJECTIONS TO ORDER S ISSUED BY MAGISTRATE DUMMLER ON MAY 3, 2005

---

4. Number of Five pages of text.
Page being One page Fax cover sheet
Transmitted, Transmission of six pages total.
Including the
Facsimile
Cover sheet: _____
Dear Clerk,
Please file accordance with C.R.C.P. 121 Sec. 25.
Thank you for your prompt attention to this matter.

05-12-2005 12:39 From – King Soopers #29 3038307635
T-035 P.001/003 F-775

FACSIMILE COVER SHEET

[stamp indicates " FILE DATE CANCELLED 05 MAY 12 PM 4:01"]

Clerk's Office telephone number: 303-663-7200

1. Date of transmission: May 12, 2005

2. Name of *pro se* party making the transmission: Troy Schwiegerath

Facsimile number: 303-688-1962
Telephone number: 303-933-2154

3. Case number, caption and title of pleading or paper:
Caption: In Re Marriage of:

Petition: DAWNA SCHWIEGERATH

Respondent: TROY SCHWIEGERATH

RESPONDENT'S NOTICE OF PETITIONER'S FAILURE TO COMPLY WITH C.R.C.P. 121 § 1-6

4. Number of Two pages of text.
Page being One page Fax cover sheet
Transmitted, Transmission of three pages total.
Including the
Facsimile
Cover sheet: _____
Dear Clerk,
Please file accordance with C.R.C.P. 121 Sec. 25.
Thank you for your prompt attention to this matter.

Confirmation Report – Memory Send

Page: 001
Date & Time: 05-12-2005 12:38
Line1: 3038307635
Machine ID: King Soopers #29

Job number: 774

Date: 05-12 12:37

To: 3036881962

Number of pages: 006

Start time: 5-12 12:37

End time: 05-12 12:38

Pages sent: 006

Status: OK

Job number: 774 ***SEND SUCCESSFUL ***

FACSIMILE COVER SHEET

Clerk's Office telephone number: 303-663-7200

1. Date of transmission: May 12, 2005

2. Name of *pro se* party making the transmission: Troy Schwiegerath

Facsimile number: 303-688-1962

Telephone number: 303-933-2154

3. Case number, caption and title of pleading or paper:
Caption: In Re Marriage of:

Petition: DAWNA SCHWIEGERATH

Respondent: TROY SCHWIEGERATH

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4. Number of Five pages of text.
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Dear Clerk,
Please file accordance with C.R.C.P. 121 Sec. 25.
Thank you for your prompt attention to this matter.

Confirmation Report – Memory Send

Page: 001
Date & Time: 05-12-2005 12:39
Line1: 3038307635
Machine ID: King Soopers #29

Job number: 775

Date: 05-12 12:38

To: 3036881962

Number of pages: 003

Start time: 5-12 12:38

End time: 05-12 12:39

Pages sent: 003

Status: OK

Job number: 775 ***SEND SUCCESSFUL ***

FACSIMILE COVER SHEET

Clerk's Office telephone number: 303-663-7200

1. Date of transmission: May 12, 2005

2. Name of *pro se* party making the transmission: Troy Schwiegerath

Facsimile number: 303-688-1962
Telephone number: 303-933-2154

3. Case number, caption and title of pleading or paper:
Caption: In Re Marriage of:

Petition: DAWNA SCHWIEGERATH

Respondent: TROY SCHWIEGERATH

RESPONDENT'S NOTICE OF PETITIONER'S FAILURE TO COMPLY WITH C.R.C.P. 121 § 1-6

---

4. Number of Two pages of text.
Page being One page Fax cover sheet
Transmitted, Transmission of three pages total.
Including the
Facsimile
Cover sheet: _____

Dear Clerk,
Please file accordance with C.R.C.P. 121 Sec. 25.
Thank you for your prompt attention to this matter.

***Transmission Result Report (MemoryTX) (Apr. 1. 2005 12:34PM) ***

DENVER FIRE DEPT. FCU

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
5814	Memory TX	3036881962	p. 4	OK	

Reasons for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection

Troy Schwiegerath

facsimile transmittal

To: Douglas County Court Fax: 303-688-1962

Attention: Cheryl Lane

From: Troy Schwiegerath **Date:** 4/1/2005

Re: Respondent's motion to correct and certify post decree adjudication **Pages:** 4

[picture of world]

- ☐ For Review
- ☐ Please comment
- ☐ Please reply
- ☐ Please Recycle

Notes Please feel free contact me with any questions you may have at 720-312-4578. Thank you.

P. 1

***Transmission Result Report (MemoryTX) (Apr. 5. 2005 11:02 AM) ***

1)
2)

Date/Time: Apr. 5, 2005 11:01AM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
7861	Memory TX	3036881962	p. 7	OK	

****

User Code

Reasons for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection

[Hand written notation stating:
Attn: Cheryl Lane
Please file accordance with
C.R.C.P. 121 Sec. 25
3-688-1962
7 Pages]

P. 1

***Transmission Result Report (MemoryTX) (Apr. 18. 2005 8:43 AM) ***

1)
2)

Date/Time: Apr. 18, 2005 8:41AM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
8248	Memory TX	3036881962	p. 6	OK	

****

User Code

Reasons for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection

ATTN: CLERK CHERYL LANE
PLEASE FILE IN ACCORDANCE WITH C.R.C.P. 121 SEC. 25
303-688-1962
DECLARATION OF ALEXXY SCHWIEGERATH
CASE NUMBER 02 DR 427
5 PAGES PLUS COVER
TROY SCHWIEGERATH

****

TRANSACTION REPORT

MAY-02-2005 09:18 AM

FOR: TLC PROPERTY LLC 3039332154

SEND

DATE	START	RECEIVER
PAGES	TIME	NOTE

MAY-02 09:16 AM 3036881962 5 2'21" OK

****

Troy Schwiegerath

facsimile transmittal

To: Douglas County Court Fax: 303-688-1962

Attention: Cheryl Lane

From: Troy Schwiegerath **Date:** 4/1/2005

Re: Respondent's motion to correct and certify post decree adjudication **Pages:** 4

[picture of world]

- ☐ For Review
- ☐ Please comment
- ☐ Please reply
- ☐ Please Recycle

Notes Please feel free contact me with any questions you may have at 720-312-4578. Thank you.

[SEAL STATE OF COLORADO]

State of Colorado
Eighteenth Judicial District
Araphahoe, Douglas, Elbert & Lincoln Counties

DOUGLAS COUNTY
JUSTICE CENTER
4000 JUSTICE WAY
SUITE 2009
CASTLE ROCK, CO 80109
303 663-7200

CLERK OF THE DOUGLAS COUNTY COMBINED COURTS

Date: May 12

To: Troy

Re: Case No.: 02DR477 (if applicable)
PLEASE NOTE: Return copy of this notice with your check.

Your document was received in the Douglas County Combined Court.

____ Filing Fee is required in the amount of $ _____
____ Signature Missing on Check
____ Written amount and numerical amount on check do not match
____ No case found in this court, and documents are returned to you.

____ Douglas Courts do not accept temporary check. Checks must be made payable to Clerk of Court.

____ Due to the fact there is a hold on your driver's license, payment must be made with certified funds; i.e., money order, cashier's check if paid by mail. If you pay in person, you may pay with either money order, cashier's check, case, or Visa or MasterCard.

____ No Out of State Checks accepted

_X_ Other [handwritten] We do not accept fax filings. Please file original by mail or in person.

Thank you,

____/s/__Brooke
Deputy Clerk

- ✓ The original plus one copy of ever document is to be filed in both county and district court. Copies are forwarded to the respective judge.
- ✓ Every pleading must include the case number and division assignment – indicating the same on all checks. Failure to do so can result in a delay of processing your paperwork.
- ✓ Orders require the inclusion of a self-addressed, stamped envelope.
- ✓ If your desire a copy returned to you, please provide those, along with a self-addressed, stamped envelope.
- ✓ It is your responsibility to provide a copy of pleadings to other parties involved in your case.
- ✓ Except in a very few instances, documents filed are public record.

HOURS OF OPERATION: MODAY THROUGH FRIDAY, EXCEPT LEGAL HOLIDAYS – 8:00 AM TO 4:00 P.M
ADRESS:

DOUGLAS COUNTY COMBINED COURT
4000 JUSTIC3E WAY, STE 2009
CASTLE ROCK, COLORADO 80109

Law prohibits us from giving legal advice. You can represent yourself, it is assumed you know the law and rules of procedure. If you have questions, you are encouraged to consult an attorney.

Colorado Judicial Branch's
Commission on Families in the Colorado Courts

Commission Co-chairs:

Hon. Patti O'Rourke
Retired Senior Judge
Pueblo

Former Senator
Dottie Wham
Denver

Commission Members:

Senator Norma Anderson
Lakewood

Lynn Johnson
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Public Defender
Denver

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Office of the

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Representative Bill Kaufman
Colorado Judicial Institute
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Loveland

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Colorado Supreme Court

Norm Early

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12th Judicial

Alamosa

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CASA

Colorado Springs

Karen Studen

District Administrator

10th Judicial District

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Kathleen Taylor

Attorney at Law

Craig

Dr. Lorenzo Trujillo

Westminster

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Weld County Commissioner

Representative Jennifer Veiga

Denver

Hon. J. John Vigil

17th Judicial District

Colorado

Office of the

Division of

Resa Gilats

Jessica Zender

Adams County

Sue Waters, M.A., L.P.C.
Denver

Commission on Families in the Colorado Courts
Final Report
August 2002

i

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EXECUTIVE SUMMARY
Over 50 percent of all Colorado district court filings involve families. These family cases
dominate dockets throughout the state requiring almost every judge in Colorado to handle
family issues at some point in time. This compelling reality prompted Chief Justice Mary
Mullarkey to create the Commission on Families in the Colorado Courts in January 2001.
She directed the Commission to examine the ways in which Colorado courts serve
families and to recommend changes that would improve policies, procedures, rules and
laws that affect families involved in the judicial system. This report sets forth the Commission's findings and

recommendations, which are based upon information received from the Court Improvement Committee, public hearings and special meetings, and written submissions from the public and others who interact with the courts in cases involving families. The Commission developed these recommendations after extensive discussion, debate, and review.

The Commission found that Colorado's tradition of striving for excellence in the administration of justice is very much alive. Across the state, judges and court employees are working hard to do the best they can with the resources they have available to them. The Commission learned that judicial districts across the state have implemented innovative programs aimed at providing better service to families. These initiatives are set forth in Appendix IV of this report.

The Commission chose to focus on common themes or problem areas that appeared most in need of attention. Seventy-seven recommendations are organized according to twelve themes summarized in the following paragraphs. In addition, the Commission recommends continued study of the staffing pattern issues raised by these recommendations, and recommends that the Chief Justice appoint a standing oversight committee to ensure implementation of its recommendations.

Developing A Central Case Management Process for Cases Involving Families

The Commission found that a common problem with cases involving families is a lack of

coordination and communication within the court system. The Commission recommends the implementation of a central case management process in each judicial district, which may vary by district, but should, at a minimum, establish a process to provide complete information to the court concerning all past and current involvement of family members and related parties with the courts. This process should define procedures to transfer cases involving the same families to one judicial district, and/or the same county within a judicial district, and assign, to the extent possible, those related cases to one judge.

Districts should utilize family court facilitators to achieve this coordination of cases and to monitor issues concerning the family. The goal of this coordinated approach is to avoid inconsistent and/or contradictory court orders, multiple and/or conflicting treatment plans, and time consuming multiple court appearances by family members. Additional

goals are to determine appropriate junctures in the case for judicial intervention, and provide for better-informed judicial decisions.

Providing Non-adversarial Alternatives

The Commission found that the inherent adversarial nature of the judicial system causes protracted cases, greater conflict between the parties and increased expense. The Commission recommends amendment of statutes and court rules to provide nonadversarial alternatives to the current procedures for family cases. The goal of this

approach is to reduce conflict, costs and time.

Status and Roles of Judges and Magistrates

The Commission found that there is a perception that domestic and juvenile dockets are less demanding than civil and criminal dockets resulting in less respect for judges and magistrates assigned to hear family cases. The Commission recommends recognition of judges and magistrates for exceptional and innovative work with family dockets, and provision of support services from other professionals such as CASA volunteers, special advocates, mediators and mental health workers involved in family matters as appropriate to each case. The goal of this series of recommendations is to enhance the perception that the judicial system treats family cases with the same respect as all other cases.

Selection and Evaluation of Judicial Officers

The Commission heard reports of less than acceptable judicial behavior or performance. In view of the volume of cases involving families, the Commission recommends that the judicial selection and evaluation process recognize skills required to hear these cases. The goal of these recommendations is to educate nominating and performance commissions, and judicial applicants about the volume of this caseload, and the importance to the community of resolution of family disputes.

Training of Judicial Officers

The Commission found a need for special training in family issues for judges and magistrates hearing family cases. The Commission

recommends training in the
fundamentals of family law, and provision of docket coverage to allow adequate time for
training. The goal is to provide thorough and ongoing training for judicial officers to
enable the courts to make better informed decisions for families.

Community Involvement by Judicial Officers

The Commission found that judicial officers could assist in identifying resource gaps, and
work with community groups to develop services to assist families in the community.

The Commission recommends that judicial officers be encouraged to engage in
community activities, and that the Code of Judicial Conduct should not prohibit these
activities. The goal of this recommendation is to draw upon the expertise of judicial
officers who are observing the problems and needs of the families in our communities on
a daily basis.

3

Compensation and Training for Public Sector Attorneys

The Commission found that public sector attorneys who represent children may also have
less status than their colleagues, receive less compensation, and have inadequate training.

Recognizing that costs will increase, the Commission recommends that public sector
attorneys who represent children should receive compensation comparable to that of
public defenders and alternate defense counsel, and ongoing, high quality training. The
goal of these recommendations is to provide children with the same quality of

representation afforded to others in the judicial system.

Training and Mentoring for Private Attorneys

The Commission heard concerns about the practices and performance of private attorneys involved with family cases. The Commission considered a certification requirement for family law attorneys, but ultimately decided to recommend minimum continuing legal education requirements for attorneys practicing in this area, and to support volunteer mentoring programs. The goal of these recommendations is to assure quality representation on family issues.

Ethics, Professionalism, and Accountability of Attorneys

The Commission heard reports of unethical practices and a lack of professionalism by private attorneys practicing family law. The Commission recommends support of programs to build collegiality, and educational efforts to explore the role of attorneys in family disputes.

Accessibility and Availability of Legal Services

The Commission heard numerous concerns about the lack of, or inaccessibility to, legal services for families, and lack of information about the judicial process. The Commission recommends ongoing support of existing pro bono programs, development of uniform and consistent pro bono programs throughout the state, and consideration of funding for legal services.

Roles, Responsibilities, Guidelines, and Accountability of Professionals Who Interact with the Courts

The Commission found that families involved in the legal

process are often confused
about the roles, responsibilities and accountability of the various professionals involved
in family cases. The Commission recommends that the Chief Justice appoint a
committee, or assign to the recommended family issues oversight committee, the task of
additional identification and definition of these positions, establishment of standards of
practice and training requirements for each position, and establishment of a regulating
authority to which each position is accountable.

Providing Support for Current Judicial Branch Efforts in the Areas of Pro Se
Litigants and Domestic Violence and Restraining Orders

The Commission heard concerns about domestic violence issues, restraining orders,
services for pro se litigants and a need for family-friendly facilities, and researched
current initiatives in Colorado in these areas. The Commission recommends specific
ongoing efforts in these areas to address the issues.

I. Introduction: Commission Formation, Charge, and Process

In January 2001, Chief Justice Mary Mullarkey convened the Commission on Families in
the Colorado Courts (the Commission). At the same time, the Chief Justice asked the
judicial branch Court Improvement Committee (CIC), an existing group of judges,
magistrates, and court personnel that addressed dependency and neglect issues, to study
the manner in which family cases are handled in Colorado and propose

recommendations. The CIC presented a report to the Commission in April 2001. The Commission was to (1) review the findings and recommendations in the CIC report, (2) expand on the findings and recommendations in that report through feedback received from users of the courts and the general public, and (3) provide to the Supreme Court, the General Assembly, and the Governor a plan for necessary statutory and rule changes, administrative improvements, and funding suggestions that will assist Colorado's courts to serve families and children better. The Commission was to prepare a final report to be completed by June 30, 2002. This document is the Commission's final report.

During the past 18 months, the Commission met seven times, held nine public hearings throughout Colorado, held special meetings with family law practitioners, made presentations at several conferences and meetings, and held over a dozen subcommittee meetings. At the public hearings and special meetings, the Commission received feedback from attendees. The Commission also solicited and received written comments from interested persons. A Commission member list may be found in Appendix I.

Appendix II is a list of public hearings, special meetings, and presentations. An index of all written submissions received is contained in Appendix III.

The Commission reviewed all written submissions and transcripts of the public hearings, and created a comprehensive issues list based on the feedback and comments it had

received. It categorized these into four groups and created corresponding subcommittees:
(1) Judges and Magistrates, (2) Attorneys, (3) Other Professionals, and (4) Court Process.
The Commission debated subcommittee recommendations and ultimately approved the
recommendations presented in this final report.

II. Background: Filings for Cases Involving Families Dominate
Colorado's Courts and General Findings of the Commission

Over 50 percent of all Colorado court filings involve families.1 These cases include
domestic relations (dissolution, legal separation, invalidity of marriage, parenting
responsibility, and child support), dependency and neglect of children, juvenile matters
(truancy, delinquency, status offenses, adoptions, relinquishments, and paternity),
domestic violence, and other cases that fall under probate or mental health. Cases

1 In fiscal year '01, the total of domestic relations, juvenile, probate, and mental health new filings was 53
percent of all new filings in Colorado district courts. If certain criminal filings involving families were
included, the percentage would increase. Additionally, if county court domestic violence and temporary
restraining order new filings were included, they would also increase the percentage.

involving families dominate dockets throughout the state such that almost every judge in
Colorado will handle these cases at some point in time.
The CIC and the Commission found that cases involving families are distinguishable

from other civil cases because they invariably involve emotional and psychological dimensions that transcend other civil cases. These cases bring the most personal, emotional, and private aspects of people's lives into the judicial process and the decisions reached have profound and continuing effects on the families involved. Colorado citizens place great trust in the judicial system—the court personnel and the administrative processes—to handle their cases in a timely, professional manner. The purpose of the Commission's work was to evaluate how well the current system is justifying the public's trust and, to the extent it is not, recommend how to provide trustworthy service for cases involving families.

The Commission's study of Colorado's 22 judicial districts shows that management of cases involving families varies throughout the districts, although common approaches do exist. Each district's Chief Judge makes assignments to the district's judges, which can range from one to three years. Assignments also vary by the mix of cases: civil with domestic, criminal with domestic, or civil with criminal. In rural districts, distance and geography can greatly influence how these assignments are made. Some districts have so few judges that there is not much opportunity to vary assignments significantly. Rural judges are often generalists who handle all types of cases. Assignments in urban districts can be influenced by high volume, although even some larger districts' judges are

generalists who handle all types of cases. The Commission also found that local rules
vary significantly among the districts, and procedures for individual courtrooms across
the state vary by judge. These procedures particular to judges are often not documented.
They are not easily available to pro se litigants, and, consequently, the ability of attorneys
to practice effectively and pro se litigants to participate effectively is hindered.
The Commission's study also found many examples of districts taking initiatives to
address the needs of families as they come into the judicial system. A survey reveals that
every district is implementing services or projects to better serve families involved in the
judicial process. See Appendix IV. The Commission found that space limitations often
caused problems. The October 1, 1999, report by the Colorado Supreme Court Family
Friendly Facilities Task Force and the passage of HB 02-1101 Concerning Family-
Friendly Courts, which takes effect July 1, 2002, should address many of these concerns.
While the Commission received feedback about specific problems, it chose to focus on
general themes to develop specific recommendations. Section III presents these themes
generally with references to particular recommendations. The detailed recommendations
can be found in section IV. Each recommendation is followed by an identification of 1)
who is responsible for implementing the recommendation and 2) the timeline for
implementation in terms of short or long term, i.e., within

one year or longer than one
year. Recommendations that identify both short and long term timeframes, i.e.,
Short/Long, are anticipated to have some components implemented within a year while
other components will take longer. Cost estimates are indicated in terms of low, medium,
6
or high to give a general sense of anticipated costs for implementing the
recommendation.

III. Problems that Impede Better Service Delivery for Cases
Involving Families

Twelve general problem areas were identified. For each general area, a reference is
included to specific recommendations that can be found in section IV of this report.
These problem statements summarize the issues and problems raised at public hearings
and in written submissions to the Commission. For illustrative purposes, quotes from the
public hearings are set forth in Appendix V, and referenced through footnotes in the
report.

1. A Central Case Management Process for Cases Involving Families

The Commission found that problems of lack of communication and coordination
pervade the court process.2 Although some computer limitations exist in the current
ICON system, ICON does offer assistance to judges and other court personnel when
handling cases involving families.3 Nevertheless, the Commission recommends the

implementation of a central case processing approach, which is detailed in
Recommendations 1 through 18. This approach relies on a central case management
team in the district, and facilitation by court facilitators to monitor cases, avoid multiple
treatment plans and multiple and/or conflicting orders, and, at appropriate junctures in the
case, determine when judicial intervention is needed.4 Where possible, the
recommendations require that cases in this area be assigned to one judge for the duration
of the case. The recommendations also include a minimum two-year rotation for judges
assigned to domestic dockets. The Commission considered but ultimately decided
against the creation of a family court as a means for improving coordination and
management of family cases.

2. Non-adversarial Alternatives

Much of the feedback the Commission received highlighted the inherent adversarial
nature of the judicial system.5 Process, procedure, and emphasis on money tend to cause
protracted cases, higher conflict between the parties, and more expense. Some said that
the process generally is adversarial with a particular culture built up around and within
the judicial system that leads to breakdowns in communication and coordination as well
as resistance to change. Further, the feedback collected suggests that the culture makes it
difficult to foster a collaborative approach where, ideally, information would be
appropriately exchanged to enable all participants to function

optimally within the

2 Peggy Rudden, *Advocates for Children,* Denver 6/29/01, Transcript p.3. Cheri Trine, *mother*, Fort Collins 7/11/01, Transcript p.3. See Appendix V. numbers 1 and 2.

3 ICON cannot automatically relate family cases—cases are related manually by staff .

4 Ms. Valero, Fort Collins 7/11/01, Transcript p.64. Ms. Westbrook, *Magistrate*, Grand Junction 8/29/01, Transcript p.20. See Appendix V. numbers 3 and 4.

5 Dianne Peterson, *Attorney*, Fort Collins 7/11/01, Transcript p.17. Ms. Roe, *CASA Director and Special Advocate*, Grand Junction 8/29/01, Transcript p.43. See Appendix V. numbers 5 and 6.

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system.6 Several people claimed that the system does not put a proper emphasis on the

child's best interest, i.e., the system is not child-focused. Recommendations 19 through 24 strive to reduce the adversarial aspects of court process

with regard to family cases. Statutory and rule changes are recommended to provide for

non-adversarial or less adversarial procedures.7 They also include a presumption that

parties will follow the least adversarial process unless the parties show good cause to the

court to do otherwise, except as provided by the Mandatory Procedures for Simplified

Dissolution in Appendix VI. The recommendations also address the need for

independent evaluation of non-adversarial alternatives so determinations can be made as

to their effectiveness.

3. The Status and Roles of Judges and Magistrates8

Several problems have been identified that relate to the current culture within the

judiciary and the status of judicial officers with domestic dockets. Many comments the Commission received from across the state indicate that judicial officers assigned to domestic dockets are perceived within the legal and larger communities as having less status than judicial officers assigned to civil and criminal dockets.9 The inference is that domestic cases require less intellectual and judicial skill than other case types and judicial officers who handle these cases are less respected than other judicial officers. As information about family dynamics is used more frequently in resolving matters involving families, judicial officers expressed concerns that their role as ultimate decision maker and authority figure is becoming blurred.10 Some judicial officers may be reluctant to seek training in the domestic and family area. The judicial system must be seen to treat family cases with the same respect as all other cases. Recommendations 25 through 31 address these issues. The Commission makes several recommendations that it believes will help equalize the status of judicial officers handling cases involving families. Some of these, such as recognition awards, would cost little or nothing to implement. Others that would enhance the appearance and functioning of court surroundings will require moderate or higher costs but could be phased in over time. The recommendations also clarify that judicial officers are not mental health professionals but should understand the important role of mental health professionals and

other professionals assisting on these cases.11

6 Judge Lowenbach, Fort Collins 7/11/01, Transcript p.96. See Appendix V. number 7.

7 Michael Abrams, *Attorney and respondent parent counsel*, Fort Collins 7/11/01, Transcript p.20. See Appendix V. number 8.

8 Judges and magistrates are judicial officers. In this report, references to judicial officers means both judges and magistrates.

9 Tim Downey, *Attorney*, Fort Collins 7/11/01, Transcript p.74. Ms. Valero, Fort Collins 7/11/01, Transcript p.34. See Appendix V. numbers 9 and 10.

10 Harlan Bockman, *District Court Chief Judge in Adams County*, Denver 6/29/01, Transcript p.54. See Appendix V. number 11.

11 Harlan Bockman, *District Court Chief Judge in Adams County*, Denver 6/29/01, Transcript p.54. See Appendix V. number 11.

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4. The Selection and Evaluation of Judicial Officers

There were several reports of less-than-acceptable judicial officer behavior or performance. While these incidents are thought to be a small percentage of the overall performance of the bench, the feedback has been significant enough to prompt a close review of the selection and evaluation elements within the judicial system. While some reports have been stated generally as judicial officer "horror stories," others have been very specific examples of judicial officers not treating people in the courtroom with civility or of judges literally falling asleep on the bench. Occasionally, judicial officers' decisions are not understood by all involved and sometimes

raise ethical concerns such as bias.12 Many of these incidents are not reported with specificity because attorneys and litigants are reluctant to be openly critical of judicial officers. Some people at the public hearings raised issues of accountability and wondered whether there is a way to monitor "customer" satisfaction and provide an opportunity to report the manner in which a judge handled a case.

The Commission chose to address these issues through recommendations directed toward the selection and performance evaluation processes. These can be found in Recommendations 32 through 41. The recommendations suggest that there are distinguishable skills that are important for all judicial officers but especially for those hearing cases involving families.13 The recommendations in this area highlight the need for applicants to be made aware of the high volume of case filings in this area.14 Another recommendation encourages Chief Judges to take into consideration the expressed preference of judicial officers to be assigned to cases involving families where there is a recognized need for family law judicial officers in a particular district. The recommendations also include enhancements for the judicial evaluation process.

5. Training of Judicial Officers

Many of the problems identified throughout the Commission's process could be linked to training of judicial officers.15 Recommendations 42 through 49 address training issues,

some of which would have little or no associated cost. Additionally, the
recommendations include specific subject matter for judicial officer training. They stress
the need for new judicial officers to receive no less than eight hours of training directly
relevant to family issues before they are assigned to cases involving families.

12 Colt Simms, Denver 6/28/01, Transcript p.23. See Appendix V. number 12.

13 Patricia Hall, *Attorney and former County Court Judge and Tribal Judge*, Durango 9/25/01, Transcript
p.65. See Appendix V. number 13.

14 Melinda Bronson, *Clinical Social Worker, Parenting Time Evaluations, Parenting Time Coordinator and
S.A.*, Durango 9/25/01, Transcript p.40. See Appendix V. number 14.

15 Patricia Hall, *Attorney and former County Court Judge and Tribal Judge*, Durango 9/25/01, Transcript
p.65. Maria Subia, *Director of the East Child Care Center and Preschool*, Pueblo 10/10/01, Transcript
p.52. See Appendix V. numbers 15 and 16.

6. Community Involvement by Judicial Officers

Many suggestions were made that judges ought to be given latitude both under the
Judicial Code of Conduct and culturally to engage more freely in community activities.16
While certain activities are clearly prohibited or limited under the Code, it is suggested
that judges can play a more direct and active role in communities to help identify
resource needs and provide leadership to develop services to meet those needs.
Recommendations 50 through 52 address this concern. They

provide that community leadership should be encouraged and specify certain activities in which judicial officers can participate. There is also a recommendation that to the extent the Code does not clearly allow or prohibit any of the specified activities, an authoritative interpretation should be sought and made available.

7. Compensation and Training for Public Sector Attorneys

Current practice (out of necessity) dictates that attorneys newly admitted to the bar are more frequently appointed to represent children because more experienced attorneys do not accept such appointments by reason of the inadequate compensation. Issues were raised concerning the qualifications and performance of public attorneys who represent children.17 Recommendations 53 through 54 recommend that compensation for these attorneys be raised to levels comparable to those paid to other public attorneys such as public defenders and alternate defense counsel. Additionally, the recommendations recognize the need for ongoing, quality training for all public sector attorneys, and urge that minimum training standards should be developed and applied consistently statewide.18

8. Training and Mentoring for Private Attorneys

The Commission debated whether there should be a certification requirement for attorneys who practice in the family law area and ultimately decided that there should not be such a requirement. However, the Commission is recommending that the Chief

Justice through a Chief Justice Directive set minimal training standards for private attorneys who practice in the family area.19 The standard should be a minimum of eight continuing legal education credits in the family law area within each three-year reporting period. Recommendations 55 through 57 address the issues of training and mentoring for private attorneys.

16 Mr. Lococo, *Attorney*, Fort Collins 7/10/01, Transcript p.2. See Appendix V. number 17.

17 Michael Abrams, *Attorney and respondent parent counsel*, Fort Collins 7/11/01, Transcript p.23. Ms. Strewler, *Executive Director of CASA of Colorado Springs*, Pueblo 10/10/01, Transcript p.60. Julie Ridgeway, *Member of the Judicial Study Committee*, Grand Junction 8/28/01, Transcript p.37. See Appendix V. numbers 18, 19 and 20.

18 Michael Abrams, *Attorney and respondent parent counsel*, Fort Collins 7/11/01, Transcript p.23. See Appendix V. number 21.

19 Mary Dawes, Durango 9/25/01, Transcript p.29. See Appendix V. number 22.

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9. Ethics, Professionalism, and Accountability of Attorneys

The Commission heard reports of unethical practices or lack of professionalism by attorneys practicing in this area.20 These ranged from unreturned phone calls to charging exorbitant fees.21 The Commission spent considerable time exploring options that would help improve attorney conduct. Recommendations 58 through 61 encourage judicial officers to enforce their orders through the imposition of sanctions against attorneys and

parties who appear before them.22 They also provide ideas for building collegiality among family law practitioners.

10. Accessibility and Availability of Legal Services

There were numerous concerns raised about the lack of or inaccessibility to legal services.23 Many reasons or factors seem to drive this problem. Sometimes excessive fees prevent individuals from hiring an attorney. Another reason is lack of attorneys, particularly in rural areas. Rural areas are underserved yet at the same time there often is not enough business in a rural area for an attorney to build a practice around cases involving families. At the public hearings, the Commission heard several reports of people wishing they had more and better information up front in the judicial process.24 Recommendations 62 through 67 provide many ideas for enhancing accessibility and availability of legal services. They suggest that more can be done within the districts to ascertain information about existing services and make that information available within the community.

11. Roles, Responsibilities, Guidelines, and Accountability of Professionals who Interact with the Courts

The Commission discovered a compelling need to clearly identify each of the individuals involved in cases involving families and their respective roles, responsibilities, and accountability mechanisms. Included in this group are special advocates, CASA volunteers, *guardians ad litem*, court facilitators, parenting

coordinators, parent
educators, case workers, school psychologists, mediators, mental health professionals,
doctors, accountants, and other experts or professionals called upon in these cases for
various reasons.25 In Recommendations 68 through 74, the Commission recommends

20 Mary Dawes, Durango 9/25/01, Transcript p.29. See Appendix V. number 22.
21 Ms. Leland, Durango 9/25/01, Transcript p.10. See Appendix V. number 23.
22 Ms. Leland, Durango 9/25/01, Transcript p.10. See Appendix V. number 23.
23 Mary Dawes, Durango 9/25/01, Transcript p.39. Mr. Vaughan, Fort Collins 7/10/01, Transcript p.11. See Appendix V. numbers 24 and 25.
24 Colt Simms, Denver 6/28/01, Transcript p.25. Catherine Cattarello, *Executive Director for the Women's Resource Center*, Durango 9/25/01, Transcript p.71. Bev Keith, Grand Junction 8/28/01, Transcript p.11.
See Appendix V. numbers 26, 27 and 28.
25 Ms. Schure, Fort Collins 7/11/01, Transcript p.47. Robert Smith, *Attorney and SCAO employee*, Fort Collins 7/11/01, Transcript p.66. Ms. Waters, *Mediator*, Fort Collins 7/11/01, Transcript p.49. See Appendix V. numbers 29, 30 and 31.

that position descriptions be developed for many of these individuals and accountability
mechanisms be clearly established either through existing regulatory entities or through
statutory amendment, if necessary.26 Appendix VII contains position descriptions for
most of the professionals involved in either domestic relations matters or dependency and

neglect matters. The Commission intends for these descriptions to be a useful tool to all involved in these cases.

12. Support for Current Judicial Branch Efforts in the Areas of Pro Se Litigants, Domestic Violence and Restraining Orders, and Family-Friendly Facilities

Upon hearing concerns raised over domestic violence and restraining orders, services for *pro se* litigants, and the need for family-friendly facilities, the Commission conducted research into current efforts in these areas.27 The Commission found that Colorado is making progress in these areas, and has recommended that the judicial branch maintain resources and support to continue these efforts. These recommendations are 75 through 77.

The Commission also adopted two **general recommendations (78 and 79)** that relate directly to implementation of its recommendations. The Commission recognizes that several of its recommendations raise issues of staffing configurations or patterns within the 22 judicial districts as well as variances in the availability of resources within the districts. The Commission has compiled relevant information to assist the judicial branch in addressing these concerns. It is asking the Staffing Patterns Subcommittee within the Branch to review this material to develop staffing models that will assist the districts in implementing the Commission's recommendations.

Finally, the Commission recommends that a Family Issues

Oversight Committee be
created to oversee implementation of the recommendations
and maintain the momentum
created by the Commission during the past 18 months.

IV. Recommendations

A Central Case Management Process for Cases Involving Families

1. All open cases involving a family should be coordinated by a centralized case management team. In this context central case management means:

A. Transfer all cases involving the same family to one judicial district;

B. Assign all cases in a judicial district involving the same family to one judicial officer for the duration of all such cases;

26 Celeste Kling, *Attorney, GAL, SA, Mediator and Teacher*, Fort Collins 7/11/01, Transcript p.55. See Appendix V. number 32.

27 Grace Hererra, Pueblo 10/10/01, Transcript p.21. See Appendix V. number 33.

C. Gather for the judicial officer or court facilitator information about out-of-district cases concerning the same family;

D. Use court facilitators to monitor progress of the case and determine when the case needs judicial intervention; and

E. Use a team approach where applicable.

Who is responsible: Supreme Court, SCAO, Chief Judges, judicial officers, court facilitators, other court personnel

Timeline for implementation: Long

Estimated costs: Medium

2. The central case management team must be knowledgeable of the history of legal proceedings and

all open cases involving all members of the same family in order to offer a uniform and rational approach to resolving family issues.
Who is responsible: Court facilitators, other court personnel, other professionals
Timeline for implementation: Long
Estimated costs: Low
3. For the purpose of achieving recommendation number 1., family members shall be defined as all of the minor children in a household, their parents or guardians living in and out of the household, and the significant others (boyfriends, girlfriends, spouse) of parents living in the household. The court facilitator may recommend to the judicial officer the inclusion of other family members in the bundle of cases.
Who is responsible: Judicial officers, court facilitators, other court personnel
Timeline for implementation: Long
Estimated costs: None
4. Family case types should include the following: dependency and neglect, delinquency, truancy, adoptions, relinquishments, family related misdemeanors under Title 18 of C.R.S., TROs, PROs, DUIs, DWAIs, mental health, and domestic relations. The court should have the discretion to add other case types not listed above if it is in the best interest of the family, except for felony cases.28
28 Combining felony cases was a disputed issue before the Commission. No consensus was reached but the subject should be studied further. Some Commission members believe that felony cases involving sex assault, sex abuse, incest, domestic abuse, child abuse and possession of controlled substances should be included to provide a complete, coordinated case management process for families.

Who is responsible: Judicial officers, court facilitators, other court personnel
Timeline for implementation: Long
Estimated costs: None
5. Develop case management protocols for family matters within each judicial district that:
A. Identify cases to be included within the central case management approach or those that must proceed independently;
B. Articulate clearly the extent to which accelerated and non-adversarial procedures will be used and for which cases;
C. Determine which judicial officer will be responsible for a given case; and
D. If the judicial officer assigned to a case is a magistrate, then determine at what stage the case will be forwarded to a district court judge using what procedure;
E. Define clearly the roles of the court facilitators, magistrate, and mediator with regard to who may prepare orders and recommend resolutions; and
F. As directed by the Court of Appeals in Tripp v. Borchard, 29 P.3d 345 (Colo. App. 2001), avoid the situation where a judicial officer participates in mediation or settlement discussion in a case where that judicial officer might eventually be required to adjudicate formally.
Who is responsible: Judicial districts via Chief Judges, District Administrators, judicial officers, court facilitators
Timeline for implementation: Long
Estimated costs: Medium
6. Multi-discipline or cross-system teams should be

established as an independent community resource to assist the central case management team in order to assure that all applicable services are provided to the family and a sensible treatment plan is developed. This team should include volunteer members of the community including clergy, teachers, pediatricians, mental health professionals, attorneys, and other appropriate people in addition to special advocates, parenting coordinators, and court facilitators.

Who is responsible: Judicial districts via Chief Judges, District Administrators, court facilitators, other professionals

14

Timeline for implementation: Long

Estimated costs: Medium

7. Develop processes that require professionals involved in the case to meet prior to a court hearing to assure that the court gets the most complete and accurate information, particularly with regard to treatment plan specifics. This may include providing judicial officers with information about available resources for evaluation, counseling and other mental health services, placement options for children and domestic violence victims, and other experts. It should be made clear whether these resources are available directly to the judicial officer.

Who is responsible: Judicial districts via Chief Judges, District Administrators, judicial officers, court facilitators, other professionals

Timeline for implementation: Long

Estimated costs: Medium

8. Develop required training of all professionals that would focus on teamwork among professionals, processes that can be used for case conferences either with the central case management team or the

multidisciplinary
team, child development, and other
appropriate topics.
Who is responsible: SCAO, judicial districts via Chief Judges, District Administrators, court facilitators, other professionals
Timeline for implementation: Long
Estimated costs: Medium
9. Methods should be developed to resolve conflicts that arise when criminal matters such as domestic violence are combined with civil matters such as dissolution and dependency and neglect.
Who is responsible: Judicial officers, court facilitators, other court personnel, practitioners
Timeline for implementation: Long
Estimated costs: Low
10. Judicial officers should be assigned to family matters for a minimum rotation period of two years, with an option to continue at the election of the judicial officer and the chief judge. A fixed number of years by which judicial officers must rotate out of a family assignment is inappropriate.
Who is responsible: Chief Judges, judicial officers
Timeline for implementation: Long
Estimated costs: Low
15
11. Cases should stay with the central case management team when a judicial officer unavoidably rotates out of hearing family cases and cannot take the case with him or her. Ideally, another judicial officer who has been part of the central case management team would take over the case.
Who is responsible: Court facilitators, judicial officers
Timeline for implementation: Long
Estimated costs: Low

12. The court facilitators must coordinate issues involving the same family to avoid multiple treatments and assessment plans and/or potentially conflicting orders, monitor the progress of cases, and determine appropriate junctures for judicial intervention as well as involvement of other members of the case management team, the multi-discipline/cross-system team, or other professionals who may be involved in the case.
Who is responsible: Court facilitators
Timeline for implementation: Long
Estimated costs: Medium
13. Court facilitators must be given additional funding and resources to perform their present and expanded assignments.
Who is responsible: Supreme Court, SCAO, General Assembly
Timeline for implementation: Long
Estimated costs: Medium
14. The central case management team should be phased in over an 18-month period and should start with family cases that have a dependency and neglect component. During the start-up phase, initial cases should be identified, the volunteer multi-discipline team should be selected, and the court facilitator should be trained. By the 19th month the central case management team should be sufficiently organized to accept all family cases.
Who is responsible: Judicial districts via Chief Judges, District Administrators, judicial officers, court facilitators, other professionals
Timeline for implementation: Long
Estimated costs: Medium
15. Seek funding from the General Assembly to measure results from central case management approach.
Who is responsible: Supreme Court, SCAO, General

Assembly, judicial districts
Timeline for implementation: Long
16
Estimated costs: Medium/High
16. As much as possible, extend the use of ICON in identifying cases related to the same family. Train court facilitators for optimal use of ICON.
Who is responsible: SCAO, court facilitators
Timeline for implementation: Short/Long
Estimated costs: Medium
17. Create an interdepartmental and interagency task force comprised of representatives who understand the current technologies to evaluate technology issues, develop improved collaboration across departments and agencies, continue ICON improvements where possible, and foster better information sharing.
Who is responsible: Supreme Court, SCAO, other organizations outside the judicial branch
Timeline for implementation: Short
Estimated costs: Low
18. The Chief Justice should establish performance standards for the Chief Judges in each of the 22 districts that outline goals and objectives used to measure how the districts are handling cases involving families. This should be accomplished through one or more of the following resources: the Families Issues Oversight Committee, a task force, or a public advisory committee.
Who is responsible: Supreme Court, Chief Judges, Families Issues Oversight Committee
Timeline for implementation: Short/Long
Estimated costs: Low
Non-adversarial Alternatives
19. Court rules and state statutes should be amended as needed to provide non-adversarial alternatives to the

procedures currently required.
Who is responsible: Supreme Court, SCAO, General Assembly
Timeline for implementation: Short/Long
Estimated costs: Low/Medium
20. The amendments should apply to the following rules or statutes: Dissolution of Marriage, probate code regarding guardianship, sections of the Children's Code relating to dependency and neglect, delinquency, and paternity and support.
Who is responsible: Supreme Court, SCAO, General Assembly
17
Timeline for implementation: Short/Long
Estimated costs: Low/Medium
21. There should be a presumption that parties will follow the least adversarial process unless the parties show good cause to the court to do otherwise, except as provided in the Mandatory Procedures for Simplified Dissolution. The least adversarial process may differ by case and should not be presumed to be exclusively mediation.
Who is responsible: Supreme Court, Chief Judges, judicial officers, practitioners
Timeline for implementation: Short/Long
Estimated costs: Low
22. Where implemented, the simplified dissolution program should incorporate the Mandatory Procedures developed by the Office of the State Court Administrator as well as the revised financial affidavit and authorization for release form developed by the practicing family bar. These documents are attached to this report in Appendix VI.
Who is responsible: Supreme Court, SCAO, Chief Judges, judicial officers, practitioners

Timeline for implementation: Short/Long
Estimated costs: Low

23. Independent evaluations must be conducted for nonadversarial alternatives such as the simplified dissolution program. The General Assembly should be asked to provide the funds to carry out such evaluations.

Who is responsible: Supreme Court, SCAO, General Assembly
Timeline for implementation: Long
Estimated costs: Medium

24. Measurements for assessing district success must be developed, particularly in the area of family matters. Such qualitative measurements may include whether there are improved results other than quantitative results, are there savings in dollars, and are projects subjectively supported by participants.

Who is responsible: SCAO, district administrators
Timeline for implementation: Short
Estimated costs: Low/Medium

18

Status and Roles of Judges and Magistrates

25. Accord judicial officers hearing family matters recognition for outstanding, exceptional, and innovative work through awards or other means of commendation.

Who is responsible: Supreme Court, Chief Judges, SCAO, organizations outside judicial branch
Timeline for implementation: Short
Estimated costs: Low

26. Implement a system by which judicial officers who are ill-suited, burned out, or ineffective in the family law area are removed from this assignment.

Who is responsible: Supreme Court, Chief Judges
Timeline for implementation: Long

Estimated costs: Low/Medium

27. Enhance the functioning of family court cases by upgrading computers to meet the specific needs of family cases arising in more than one judicial district. Also, continue to implement the October 1, 1999, Colorado Supreme Court Family-Friendly Facilities Task Force report recommendations for enhancing courtroom surroundings as required by HB02-1101 which is effective July 1, 2002.

Who is responsible: SCAO, General Assembly
Timeline for implementation: Long
Estimated costs: High

28. Accord magistrates who hear family matters the same increased recognition and enhanced surroundings as recommended for judges.

Who is responsible: SCAO, General Assembly
Timeline for implementation: Long
Estimated costs: High

29. Develop methods of open and candid channels of communication for judicial officers who hear family matters. For these judicial officers, schedule a group meeting at least annually, i.e., at the annual judicial conference.

Who is responsible: SCAO, judicial officers
Timeline for implementation: Short
Estimated costs: Low

30. If the judicial function will always be performed by a district level judicial officer in a courtroom setting, then provide support services to that judicial officer in the form of CASA workers, special advocates, mediators, mental health workers and other experts and advisors

who can fulfill the evaluation, counseling and especially facilitation roles for that district court.

Who is responsible: SCAO, General Assembly

Timeline for implementation: Short
Estimated costs: Medium/High

31. Judges are not mental health professionals but they should understand the important role of mental health and other professionals in the case and engage those professionals in the case as appropriate.

Who is responsible: SCAO, other professionals, judicial officers
Timeline for implementation: Short
Estimated costs: Low

Selection and Evaluation of Judicial Officers

32. Judicial officers hearing family matters should have distinguishable skills to improve performance with resulting greater job satisfaction. These skills include but are not limited to: empathy, good common sense, patience, an ability not to "talk down" (be condescending) nor "talk above" the heads of the parties, (i.e., explain legal concepts in an understandable manner), a sensitivity to know when parties are understanding the concepts and expectations presented, an interest in family matters, an understanding of the integral importance and implications of family matters to individuals and their extended families, an ability to make immediate and appropriate emergency decisions, an ability to help the clients realize that they will be involved with their children forever and must keep their spousal conflict away from those children, an ability to help the clients move through the process and then on with their lives, an ability to keep their own marital experiences separate from what they see in the courtroom, and an ability to keep themselves in control, i.e., stay calm. These are important qualities for every judicial officer, but especially for those handling cases involving families.

Who is responsible: Performance Commissions, Chief Judges
Timeline for implementation: Short/Long
Estimated costs: Low

33. The Judicial Nominating Commissions and the Governor must be made aware that more than half of 20 the "consumers" in the judicial system are seeking resolution of family issues, the most important issues in their lives. Therefore, expertise in family law is desirable. When there is a recognized need for a family law judicial officer in a particular district, the Nominating Commission should take into consideration those with expressed preference for and experience in family law. The applicant should be advised of the nature of family issues, the extraordinary challenges presented by them, and the skills and qualities required to meet those challenges.

Who is responsible: SCAO, Nominating Commissions, Governor
Timeline for implementation: Short/Long
Estimated costs: Low

34. In a district where judicial officers are not specifically assigned to family law, the Judicial Nominating Commission must clearly advise the applicant that he or she will likely be asked to commit as much or more than half of his or her time and energy to dealing with family issues. When screening applicants, senior or retired family law judicial officers recognized for prior extraordinary service should be included in the screening process of interested applicants (perhaps via a formal presentation or seminar) to explain the day-today realities, pressures, and substantive challenges of family law.

Who is responsible: SCAO, Nominating Commissions,

enior or retired family law judicial officers
Timeline for implementation: Short/Long
Estimated costs: Low

35. Because the selection process does not always produce candidates to meet the need for judicial officers experienced in family law, magistrates with demonstrated skill and expertise in dealing with family issues should be carefully considered for elevation to district court judge.

Who is responsible: Nominating Commissions, Governor
Timeline for implementation: Short/Long
Estimated costs: Low

36. Judicial nominating commissioners should be trained in understanding the specific nature of the family law assignment so they can identify the distinct qualities of applicants that translate to a higher potential for success in dealing with family issues.

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Who is responsible: SCAO, Nominating Commissions
Timeline for implementation: Short/Long
Estimated costs: Low

37. A process such as that used in the District of Columbia or the Colorado Women's Bar seminar "Getting Benched" should be used to help identify prospective judicial officers suited for family matters and encourage interested, experienced individuals (who might be otherwise discouraged due to the past tendency not to appoint family law practitioners to the bench) to apply for judicial offices.

Who is responsible: Nominating Commissions, bar groups
Timeline for implementation: Short/Long
Estimated costs: Low/Medium

38. Judicial Nominating Commissions should be instructed

that political affiliation of a candidate should not be a factor in selection of judicial officers.
Who is responsible: SCAO, Nominating Commissions
Timeline for implementation: Short/Long
Estimated costs: Low
39. Consumers of court services should be clearly advised as to where and how complaints can be most effectively registered. The reporting, screening and response process should be as advanced as the process created by the Office of Attorney Regulation. Give the public an opportunity to voice complaints and praise by establishing a well-publicized "open door" comment policy on a more approachable level.
Who is responsible: SCAO, judicial districts via Chief Judges or District Administrators
Timeline for implementation: Short
Estimated costs: Low/Medium
40. Develop a system of lay (and, perhaps, peer) volunteers with some knowledge and appreciation of family law to randomly "sit in" on family law proceedings and offer observations regarding the judicial officer's performance, which could be used as part of the judicial evaluation process.
Who is responsible: SCAO, bar groups, other organizations outside judicial branch
Timeline for implementation: Short
Estimated costs: Low
41. Evaluation criteria should include general demeanor and civility; ability to talk to litigants in a straightforward manner; substantive understanding of
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not only family law, but also bankruptcy, taxation, and other related areas when appropriate; ability to explain the law to *pro se* litigants; ability to issue timely orders and act decisively when necessary; and the willingness

to utilize sanctions or contempt powers when necessary.
Who is responsible: SCAO, Performance Commissions
Timeline for implementation: Short/Long
Estimated costs: Low

Training of Judicial Officers

42. Significant efforts to obtain private funding for all types of judicial training and education should be pursued aggressively. Collaborations with disinterested third parties, e.g., the Colorado Judicial Institute, which are currently under consideration and fall within ethical parameters, should serve as alternative funding sources for training and education of judicial officers.
Who is responsible: SCAO, organizations outside the judicial branch
Timeline for implementation: Long
Estimated costs: Medium

43. Docket coverage should be provided to judicial officers handling cases involving families to assure that case time demands are met while still allowing adequate time for training. The senior judge program needs to be enhanced to help meet this need.
Who is responsible: SCAO, Chief Judges, District Administrators
Timeline for implementation: Short/Long
Estimated costs: Medium

44. The Supreme Court should direct the State Court Administrator's Office to provide appropriate training in the fundamentals of family law, child development, domestic violence, dependency and neglect, and delinquency to judges. Exposure to this training will enable the court to make better decisions in cases involving families. The following specific items are suggested for inclusion:

A. The special characteristics and needs of sexual abuse victims, and the tendencies of perpetrators

to continue committing acts of sexual abuse;
B. The changing developmental needs of children—patterns of child growth;
C. The impact of removal and placement on a child—separation, attachment, and bonding;
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D. Child-sensitive approaches to interviewing and communicating with children;
E. Family dynamics in incidents involving child abuse and domestic violence;
F. The roles of social services, law enforcement, the courts, schools, and treatment specialists in the protection and treatment of abused children.
G. A comprehensive understanding of the Colorado Children's Code, and standards relevant to *guardians ad litem*;
H. The nature, purpose, and roles of the various agencies and advocates involved as well as the community services available to the child and family.
I. The complexity of intercultural communications (language and traditions) and cultural sensitivity; cultural sensitivity training should include family dynamics, ethnicity, socioeconomic factors, education and financial matters.
J. Substantive areas for training should include: child development and impact of early childhood trauma, high-conflict divorce, cycle of domestic violence, bankruptcy, social security, retirement plans, tax law relevant to property allocation and maintenance, and business and other asset valuation.
K. Before being assigned to family cases, a new judicial officer should be required to receive

training of a minimum of eight hours directly relevant to basic family issues. A judicial officer who has not dealt with family issues for as long as two years should be required to receive "refresher" training of no less than four hours on recent developments in family law before returning to family cases.

Who is responsible: Supreme Court, SCAO
Timeline for implementation: Short/Long
Estimated costs: Medium/High

45. Training of judicial officers should include appropriate use of available means to sanction and correct unprofessional lawyering and uncontrolled litigant behavior. This training should include the following:

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A. Prompt and decisive enforcement of previouslyentered orders29;
B. C.R.C.P. 11;
C. C.R.S. §13-17-101 et seq.;
D. C.R.S. §14-10-119 and "fault;" and
E. Complaints to the Office of Attorney Regulation.

Who is responsible: SCAO
Timeline for implementation: Short/Long
Estimated costs: Medium/High

46. Volunteer training from senior family law bar and mental health professionals should be provided to judicial officers at little or no cost to them, the judicial branch, or taxpayers if those opportunities are specifically approved as involving no appearance of impropriety. These opportunities include:

A. Periodic revisions of the family law bench book by the Family Law Section of the CBA.
B. Traveling "judicial officer only" family law seminars.

C. Initial classes and continuing mentoring for judicial officers by a senior, experienced family law attorney and/or mental health professional with the unequivocal and enforceable commitment that neither the mentoring attorney/mental health professional nor any member of her/his firm or practice shall ever appear before the mentored judicial officer or disclose to anyone any aspect of the mentoring process. Experienced senior judges could be used in this capacity as well.

D. Free dissemination of CLE materials to judicial officers, e.g., CLE video recordings, annual updates of Colorado family law.

E. Waiver of CLE registration fees for judicial officers.

F. Use of Canon 3.A. (4) that provides, "A judicial officer…may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judicial officer if the judicial officer gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond."

29 The Commission found that judicial officers are often reluctant to impose sanctions. Training in this area may help judicial officers overcome this reluctance.

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Who is responsible: SCAO, bar groups, practitioners
Timeline for implementation: Short/Long
Estimated costs: Low

47. Establish peer training through a confidential judicial officer family issues computer "list serve" or "chat room."

Who is responsible: SCAO, judicial officers

Timeline for implementation: Short
Estimated costs: Medium

48. The Commission's recommendations regarding judicial officer training should be incorporated into the judicial branch's forthcoming strategic education plan.

Who is responsible: SCAO Human Resources Division
Timeline for implementation: Short

49. As resources become available, distance learning opportunities should be developed. To the extent that technological resources need to be improved to make such opportunities available, they should be.

Who is responsible: SCAO, General Assembly
Timeline for implementation: Long
Estimated costs: Medium/High

Community Involvement by Judicial Officers

50. Community involvement by judicial officers should be encouraged and opportunities should be made available for those who choose to participate. The contributions made by those who engage in community and other activities should be recognized in their performance review. Leadership can be exercised both internally and externally.

Who is responsible: Judicial officers, Performance Commissions
Timeline for implementation: Short/Long
Estimated costs: Low

51. Externally, judicial officers may, and should, be involved in the following opportunities:

A. Testify before legislative committees or tribunals regarding family law and family resource issues;

B. Set high expectations and minimum standards of practice for attorneys and other professionals who practice in the area of family and juvenile law and hold accountable those who do not meet

those high expectations and standards;
26
C. Maintain a close liaison with schools, departments of human services, law enforcement, mental health and other private and public agencies involved in the provision of services to children and families; interagency collaboration and cooperation should be developed and maintained by the court;
D. Devise and organize strategies and programs to educate and involve the community in assisting children and families;
E. Investigate and determine the availability of specific prevention, intervention, and treatment services in the community for children and families;
F. Provide leadership for and assist in developing resources to meet the needs of families and children as identified.
Who is responsible: Judicial officers
Timeline for implementation: Short
Estimated costs: Low
52. To the extent the Code of Judicial Conduct does not clearly allow or prohibit any of the foregoing or other opportunities, authoritative interpretation upon which a judicial officer can rely should be available.
Who is responsible: SCAO Legal Counsel
Timeline for implementation: Short
Estimated costs: Low
Compensation and Training for Public Sector Attorneys
53. Compensation for public sector attorneys who represent children should be raised to the level of other public attorneys such as public defenders and alternate defense counsel.30
Who is responsible: Office of the Child's

Representative, SCAO, General Assembly
Timeline for implementation: Short/Long
Estimated costs: High

54. All public sector attorneys should receive ongoing, high-quality training that includes the following components:

A. Training should be readily accessible statewide; this includes training that is economically feasible for the public sector attorney as well as geographically available;

30 See Appendix VIII. for a detailed analysis on public sector attorneys.

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B. Minimum training standards should be established that are consistent and uniform statewide; standards should address content, achievement, and outcomes;

C. Training should be specific to the attorney's area of practice; and

D. Training programs should be established that are ongoing and provide for the continuous improvement in the competency and quality of public sector attorneys.

Who is responsible: Bar groups, SCAO, other organizations outside judicial branch
Timeline for implementation: Short/Long
Estimated costs: High

Training and Mentoring for Private Attorneys

55. There should be no requirement of certification for attorneys who practice in the family law area. However, the Supreme Court should impose a requirement of minimal training standards for private attorneys practicing in the family law area similar to the continuing legal education requirements now required of *guardians ad litem.* A Chief Justice Directive should

be issued, requiring those who accept family law cases to obtain a minimum of eight continuing legal education credits in the area of family law during each three-year reporting period. This should be monitored according to the following two options: a) the filing of a certificate of compliance with the Supreme Court, which could be referenced by members of the public seeking counsel in the domestic relations area, or b) a requirement similar to Rule 11 of the C.R.C.P., which would state that by signing a pleading in a domestic relations case an attorney is certifying his or her compliance with the CLE requirement.

Who is responsible: Supreme Court
Timeline for implementation: Short/Long
Estimated costs: Low/Medium

56. Family law continuing legal education programs should be made available at no cost or a reduced fee to those attorneys who agree to take at least one *pro bono* family law case during each reporting period. A basic CLE family law practice and procedure videotape program should be created and made available through the mail

to *pro bono* attorneys at no cost as well as to all other attorneys at a reasonable cost.

Who is responsible: Bar groups
Timeline for implementation: Short/Long
Estimated costs: Low/Medium

57. Support the creation of a volunteer mentoring program between experienced members of the family law bar and attorneys who lack experience in the practice of family law. The Family Law Section of the CBA should sponsor a program where members would make themselves available by telephone to field inquiries from less experienced practitioners or occasionally provide informal supervision for an attorney handling

his or her first few family law cases. The "Harhai" list serve can be used as a mentoring tool as well.
Who is responsible: Bar groups, practitioners
Timeline for implementation: Short
Estimated costs: Low

Ethics, Professionalism, and Accountability of Attorneys

58. Any issues concerning noncompliance with a previously entered court order should have priority setting and be heard within a short period of time. Judicial officers should be encouraged to enforce their orders by imposing sanctions or utilizing their contempt powers to ensure compliance with court orders.
Who is responsible: SCAO, judicial officers
Timeline for implementation: Short/Long
Estimated costs: Low/Medium

59. Influence the legal community to be more professional, more collegial, and better acquainted by encouraging participation in professional activities, including:
A. Inns of Court, a group of new and more experienced attorneys, including judges, who meet monthly to develop personal and mentoring relationships;
B. Activities sponsored by local and specialty bar associations in addition to those organizations' more formal events;
C. Mentoring programs within local and specialty bar associations;
D. The Colorado Bar Association should encourage and assist all local bars to develop professional conciliation panels. The CBA should follow up

with the local bars to ensure the conciliation panels continue to exist and are active.
Who is responsible: Bar groups, practitioners
Timeline for implementation: Short

Estimated costs: Low

60. The Supreme Court should strongly recommend that Colorado law schools teach real-life ethics in every course including corporations, bankruptcy, and family law, by integrating real-life ethical situations in each area. In the ethics course (professional responsibility) itself, which is required by most law schools, ensure the course integrates real-life situations instead of allowing the course curriculum to be driven by the multi-state exam.

Who is responsible: Supreme Court, Colorado law schools

Timeline for implementation: Long

Estimated costs: Low

61. Revisit the representation standard within the Rule of Professional Conduct with regard to family law cases; specifically explore whether the current representation standard always best serves the family; refer this matter to the *ad hoc* domestic relations committee, which recently studied other ethical dilemmas in the practice of family law.

Who is responsible: ad hoc domestic relations committee, practitioners

Timeline for implementation: Short

Estimated costs: Low

Accessibility and Availability of Legal Services

62. The Supreme Court and the Colorado Bar Association should continue their support of bar associations, particularly local bar associations, to continue organizing *pro bono* nights, and in conjunction with the courts, dissolution settlement days at courts, although more should be done to ensure that these programs are occurring uniformly and consistently across the state.

Who is responsible: Supreme Court, bar groups

Timeline for implementation: Short

Estimated costs: Low/Medium

63. Each judicial district should investigate the availability, structure, and success of local programs by communicating with the local bar associations and reporting to the Office of the State Court Administrator 30 annually, incorporating recommendations for modifications and additions; the districts should be provided with consultative help, if needed, in identifying what they should be looking for to conduct this assessment.31

Who is responsible: Judicial districts via Chief Judges and District Administrators, SCAO

Timeline for implementation: Short

Estimated costs: Medium

64. A video-taped seminar on "How to Select An Attorney" should be prepared, perhaps based on seminar materials previously prepared by the Colorado Bar Association and the Colorado Women's Bar Association; the video tape should be consistent with materials available on the CBA Web site and it should be made available in every jurisdiction to the public, women's and men's organizations, and other organizations and forums through state offices.

Who is responsible: SCAO, bar groups

Timeline for implementation: Short

Estimated costs: Medium

65. The Supreme Court should form a committee of judges and attorneys to investigate, study, and make recommendations for providing legal services not just to the poor or working-poor but also to middle class citizens who can afford to pay some part of legal services but not the current high rates. The committee should **consider** the following:32

A. The Colorado General Assembly should

enhance funding for existing legal services in Colorado, e.g., Rural Legal Services, Pueblo Legal Services, and Denver Legal Services.

B. Investigate the feasibility and timeliness of certifying a new type of legal practitioner with more limited client duties for those clients with more limited needs and means, e.g., the working-poor and middle class. Such a program should incorporate the highest ethical, educational, and certification requirements and should not proceed if these requirements are not possible. Other features to be researched and considered in the program include:

31 There is a process underway that encompasses Recommendations 63 and 65, by establishing statewide and district legal services committees. These recommendations could be referred to those committees.

32 This is not to be confused with unbundling of legal services, which attorneys may do and thereby make certain pieces of legal work more affordable.

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i. A new, two-year college degree;

ii. Rejection of any grandfathering of existing legal providers, but possibly allowing for some limited advanced placement based on merit;

iii. Primary requirements of a complete and verifiable understanding of the ethical responsibilities of client confidentiality and loyalty and every other ethical precept;

iv. Close, full-time, accountable attorney supervision of a limited number of legal practitioners; and

v. Institute as a pilot program, preferably

focusing on the area of family law.
Who is responsible: Supreme Court, SCAO, General Assembly, prospective educational institutions interested in developing a program
Timeline for implementation: Long
Estimated costs: High

66. Judicial districts should make self-help curricula available in each jurisdiction by communicating with litigants and the local bar associations. The districts should be required to report on the status and success of these programs annually, incorporating recommendations as to modifications and additions. (Also, see recommendation no. 76.)
Who is responsible: Judicial districts via Chief Judges and District Administrators, SCAO, local bar groups
Timeline for implementation: Short/Long
Estimated costs: Medium

67. Each judicial districts should investigate the availability and structure of low-cost or no-cost alternative dispute resolution by communicating with local mental health, religious, and social service providers and the local bar associations, and be required to report on local availability annually, incorporating recommendations as to modifications and additions. The districts should educate the local bar as to available alternative dispute resolution services.
Who is responsible: Judicial districts via Chief Judges and District Administrators, local service providers, local bar groups
Timeline for implementation: Short/Long
Estimated costs: Medium

Roles, Responsibilities, Guidelines, and Accountability of Professionals Who Interact with the Courts

68. Position descriptions for professionals in the domestic relations and dependency and neglect areas have been completed by the Commission and should be used by judicial officers, attorneys, court facilitators, and others as a tool for understanding the various roles and responsibilities of those involved in family cases. These position descriptions may be found in Appendix VII.

Who is responsible: SCAO, judicial officers, court facilitators, practitioners, other professionals
Timeline for implementation: Short
Estimated costs: Low

69. A committee should be created consisting of the various court-related personnel to develop standards of practice in the court context; these standards should be developed by July 1, 2003. The committee should address the following:

A. Develop an assessment process for personnel named by the court that determines whether the individuals are meeting the established standards. Individuals who do not meet the standards should be subject to consequences.

B. Develop a system that allows for removal of individuals who are not competent in the functions of the position or role to which they have been appointed. The committee should develop an appropriate process for identifying individuals who are not performing competently and steps for corrective action and/or removal of those individuals. These processes should specify the regulatory entities and/or court to be involved.

C. Court facilitators should be responsible to recommend to the court which professionals need to be involved in a case to ensure that they

are brought into the case at the appropriate time.
D. Pursue an amendment to the special advocate statute to identify the regulatory entity responsible for each type of special advocate.
E. Identify professionals who are given court appointments, including Parenting Coordinators, for whom there is no statutory authority and pursue statutory additions or amendments.

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F. For both D. and E. above, assure that the statutory provisions place court-appointed professionals' accountability for complying with the standards of practice with their professional regulatory board or agency.
Who is responsible: Supreme Court, SCAO, General Assembly
Timeline for implementation: Short
Estimated costs: Medium

70. Develop legislation to change the name **special advocate** to **Domestic Relations Advocate.**
Who is responsible: Supreme Court, SCAO, General Assembly
Timeline for implementation: Short
Estimated costs: Low/Medium

71. Develop a universal, enabling contract for CASA agencies providing CASA volunteers to serve as **Domestic Relations Advocates** in domestic relations cases; the contract should clarify the role of the CASA volunteer when serving as a **Domestic Relations Advocate** (currently most CASAs serve in dependency and neglect cases); by such a contract, the CASA agencies would receive public funds set aside specifically for purposes of compensating what are currently called special advocates who serve in domestic relations cases (other types of special

advocates receive these funds already, if eligible; see position descriptions in Appendix VII); these funds would flow directly to the CASA agencies and not to the CASA volunteers.33

Who is responsible: SCAO, CASA agencies
Timeline for implementation: Short
Estimated costs: Low/Medium

72. To assure compliance with the current Chief Justice Directive and state statute, past efforts between the Colorado Department of Human Services and the Office of the State Court Administrator to report judge deviations from county case worker recommendations for out-of-home placements should be renewed. Specifically, a form should be developed that outlines what information should be reported.

Who is responsible: SCAO, CDHS
Timeline for implementation: Short
Estimated costs: Low

33 CASA stands for court-appointed special advocate. CASAs are part of a national network of CASA agencies and are volunteers who work for the CASA agency. Colorado has several CASA agencies.

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73. A procedure should be developed for the courts and county social services departments to follow to assure the report is completed and submitted. The procedure needs to outline clearly who is responsible for monitoring the process.

Who is responsible: SCAO, CDHS
Timeline for implementation: Short
Estimated costs: Low

74. Provide training for judges and case workers to assure an understanding of the reporting procedures and expectations.

Who is responsible: SCAO, CDHS

Timeline for implementation: Short
Estimated costs: Low

Support for Current Judicial Branch Efforts in the Areas of Pro Se Litigants and Domestic Violence and Restraining Orders

75. Self-help services for *pro se* litigants should continue to be established with uniformity and consistency statewide. These services should include kiosks or staffed information centers where litigants can obtain help completing forms and acquire other information regarding court process, scheduling, and other helpful materials.

Who is responsible: SCAO, judicial districts
Timeline for implementation: Long
Estimated costs: Medium

76. The Office of the State Court Administrator should create a standard self-help curriculum for pro se litigants for implementation in every judicial district including forms, educational videos, self-help seminars, and disclosure of statewide resources, such as the Colorado Bar Association Web site, that are already available, thus assuring statewide uniformity. Local rules and courtroom procedures unique to judges in the district should be included in the self-help curriculum and made available through self-help centers.

Who is responsible: SCAO, bar groups
Timeline for implementation: Short
Estimated costs: Medium

77. The judicial branch should support the crossdepartmental committee currently working on a Comprehensive Restraining Order Improvement Plan, which will ultimately lead to appropriate legislation, by

assigning staff and resources to this effort. A preliminary draft of this plan is included as Appendix

IX.
Who is responsible: Supreme Court, SCAO
Timeline for implementation: Short
Estimated costs: Low/Medium
General Recommendations
In addition to the recommendations developed within the subcommittees, the
Commission has also approved two other general recommendations.
The Commission recognizes that several of its recommendations raise issues of staffing configurations or patterns within the 22 judicial districts as well as variances in the
availability of resources within the districts. The Commission has compiled relevant
information to assist the judicial branch in addressing these concerns and makes the
following recommendation:
78. The Staffing Pattern Study found in Appendix IV should be forwarded to the Staffing Pattern Subcommittee of the judicial branch Trial Court Resource Committee. The Subcommittee is asked to consider this information and develop staffing models that will help the judicial districts implement the Commission's recommendations and/or accomplish district objectives with regard to serving families better.
Who is responsible: SCAO, Staffing Patterns Subcommittee of the Trial Court Resource Committee
Timeline for implementation: Short
Estimated costs: Low
Finally, the Commission wishes to acknowledge that many efforts have been made
during the past decade to study, understand, and address family issues in the Colorado
courts. In some sense, the Commission on Families in the

Colorado Courts is a culmination of all those efforts. Commission members feel strongly that the momentum generated during the past 18 months not be allowed to dissipate. Therefore, the Commission makes the following recommendation:

79. The Chief Justice should create an ongoing, oversight committee for family issues to ensure implementation of the Commission's recommendations. This committee should be new and separate from the Commission, although a few Commission members should be appointed to the new committee. As other committee members are appointed, the Chief Justice should be mindful of those recommendations requiring

creation of committees, task forces, and study groups. If those groups develop as subcommittees of the new committee, members should be able to provide the substantive expertise required to help resolve the issues described.

Who is responsible: Supreme Court, SCAO
Timeline for implementation: Short
Estimated costs: Mediu

Commission Member List

Appendix I

Commission on Families in the Colorado Courts

Member List

Christine Arguello, Deputy Attorney General
Judge Karen Ashby, Presiding Judge, Denver Juvenile Court
Dan Brinker, President, J. Daniel Brinker and Co.
Regis Groff, Former Senator, Colorado General Assembly
Sheila Gutterman, Attorney at Law, Gutterman & Griffiths, P.C.
Marva Livingston Hammons, Executive Dircector, Colorado

Department of Human
Services
Bill Hunnicutt, Attorney at Law, Hunnicutt and Appelman,
P.C.; Chair, Commission
Judges and Magistrates Subcommittee
Phil James, Attorney at Law, Denver
Lynn Johnson, Interim Deputy Director, Governor Owens'
Office of Policy and
Initiatives
David Kaplan, Colorado State Public Defender
Justice Rebecca Kourlis, Colorado Supreme Court
Judge John Kuenhold, 12th Judicial District
David Miller, Executive Director, The Denver Foundation
Gerry Moore, Colorado Judicial Advisory Council; Chair,
Commission Court Process
Subcomittee
Retired Judge Patti O'Rourke, 10th Judicial District,
Commission Co-chair
Sen. Peggy Reeves, Colorado General Assembly
Bill Ritter, Denver District Attorney
Ken Salazar, Colorado Attorney General
Rep. Matt Smith, Colorado General Assembly
Theresa Spahn, Executive Director, Office of the Child's
Representative; Chair,
Commission Attorneys Subcommittee
Trudy Strewler, Executive Director, CASA of Colorado
Springs, Inc.
Karen Studen, District Administrator, 10th Judicial District;
Chair, Commission Other
Professionals Subcommittee
Kathleen Taylor, Moffat County Attorney
Lorenzo Trujillo, Ed.D., J.D., Attorney at Law
Glenn Vaad, Weld County Commissioner
Rep. Jennifer Veiga, Colorado General Assembly
Judge John Vigil, 17th Judicial District

Sue Waters, M.A., L.P.C., Parenting After Divorce
Dottie Wham, Former Senator, Colorado General Assembly; Commission Co-chair
Judge Wendy Whicher, Dolores County Court, 22nd Judicial District

I. Staff

Resa Gilats, Management Analyst, Division of Planning and Analysis, Office of the State Court Administrator, Colorado Judicial Branch

Appendix VII
Position Descriptions

Title

GUARDIAN AD LITEM (for children named in petition)
DEPENDENCY AND NEGLECT

Who They Represent

Represents the child(ren)'s best interests.

Description of Role

Represents the best interests of the child(ren) named in the petition; the appointment of the GAL continues until permanent orders entered.

Statutory Authority

CRS 19-1-111

ACCOUNTABILITY / REGULATORY ENTITY

Attorney Regulation Office; Office of the Child's Representative(OCR) contracts with attorneys for court appointments; OCR sets minimum standards and will terminate contract if GAL not providing competent and effective services.

Licensure / Certification

A GAL must be a licensed Colorado attorney.

Training
Prior juvenile law experience is preferred.
Minimum of 10 CLE's related to GAL work
Continuing CLE credits required.
Caseload
Varies depending on size of district.
Methods of Payment
State pays; some paid hourly, some flat rate; some monthlyvaries
jurisdiction to jurisdiction.
Most GALs are paid flat fee of $1,040 for the first two years of
the case. After two years, the appointment converts to hourly paid $45.00/hour out-of-court/$55.00/hour in-court for the remainder of the appointment.
Interconnectedness
& Relationships
with Others
A GAL cannot file a D&N petition but the Department of Social
Services cannot withdraw the petition before adjudication without the GAL agreeing. The GAL may file and prosecute a
motion to terminate the parent-child relationship. The GAL is entitled to all D&N reports. The caseworker must keep the GAL
informed of any significant developments, especially between
court hearings.
Accessibility /
Availability
Court must appoint a GAL in all D&N cases.
Title
RESPONDENT PARENT COUNSEL
DEPENDENCY AND NEGLECT

Who They Represent
Attorney who represents the parent(s) of the child(ren) who are
subject of the petition brought by the county Department of Social Services.
Description of Role
Represents the respondent parent(s) in a Dependency and Neglect case; private pay attorney unless parent(s) found indigent.
Statutory Authority
CRS 19-1-105(2); CRS 19-3-202
Accountability / Regulatory Entity
Attorney Regulation Office
Licensure / Certification
Must be a licensed Colorado attorney.
Training
Continuing CLE credits.
Caseload
Varies by district and individual attorneys.
Methods of Payment
Private pay; State pay: The respondent parent counsel is paid $700 for a two-year representation period. If the case goes to termination, the attorney is paid an additional $785. After the two years, the appointment converts to hourly and they are paid
the $45 out-of-court/$55 in-court rates for the remainder of the
appointment.
INTERCONNECTEDNESS & RELATIONSHIPS WITH OTHERS
The respondent parent attorney interacts with the county attorney, GALs, CASAs, other attorneys, family court

facilitator, etc. involved in the case.

ACCESSIBILITY / AVAILABILITY

Based in part on financial resources of the parent.

Title

COUNTY OR CITY ATTORNEY

WHO THEY REPRESENT

Represents the county Dept. of Social Services/People of the State of Colorado.

DESCRIPTION OF ROLE

Prosecutes the D&N case.

STATUTORY AUTHORITY

CRS 19-3-206

ACCOUNTABILITY / REGULATORY ENTITY

Attorney Regulation Office; County or City Attorney.

LICENSURE / CERTIFICATION

Must be licensed Colorado attorney.

TRAINING

Continuing CLE credits.

CASELOAD

Varies by district

Methods of Payment

County or city pays attorney.

Interconnectedness & Relationships with Others

County or city attorney must interact with GALs, CASAs, respondent parent's counsel, other attorneys, family court facilitator, etc. involved in the case.

Accessibility / Availability

Every judicial district; all 63 counties; city attorney in City and

County of Denver.

Title

GUARDIAN AD LITEM (for parent)
DEPENDENCY AND NEGLECT

Who They Represent

Mandatory for minor parents who are not already represented by an attorney, guardian or conservator or in cases where mental health or developmental disability issues are present.

Description of Role

Represents the parent(s)

Statutory Authority

CRS 19-1-111(2)

Accountability / Regulatory Entity

Attorney Regulation Office

Licensure / Certification

Must be licensed Colorado attorney

Training

Continuing CLE credits

Caseload

Varies by district

Methods of Payment

State pays; paid hourly. In-court: $55.00/hour. Out-of-court: $45.00/hour.

Interconnectedness & Relationships with Others

Interacts with other attorneys, GAL's, CASA's, family court facilitators, etc. involved in the case.

Accessibility / Availability

Available all districts.

Title

SPECIAL RESPONDENT'S COUNSEL
DEPENDENCY AND NEGLECT

Who They Represent

Represent the special respondent who has been named in the petition. A special respondent is anyone who has been a caretaker for children or other individuals who have a significant role in the children's lives.

Description of Role

Represents the special respondent who has been named in the petition.

Statutory Authority

CRS 19-3-502(6)

Accountability / Regulatory Entity

Attorney Regulation Office

Licensure / Certification

Must be licensed Colorado attorney.

Training

Continuing CLE credits.

Caseload

Varies by district and individual attorney.

Methods of Payment

Private pay unless individual is indigent then state pays costs. Flat fee of $1,040 for first two years of the case; after 2 years Incourt: $55.00/hour. Out-of-court: $45.00/hour.

Interconnectedness & Relationships with Others

The special respondent's counsel must interact with GALs, CASAs, other attorneys, family court facilitator, etc. involved in the case.

Accessibility / Availability
Varies district to district—some always appoint and some do not appoint.

Title
SOCIAL SERVICES CASE WORKER DEPENDENCY AND NEGLECT

Who They Represent
Employee of the county Department of Social/Human Services.

Description of Role
Provides case management support and services to families. Develops treatment plans and provides court reports and recommendations on family progress and/or change in status. Monitors family.

Statutory Authority
CRS 19-3-501(1)

Accountability / Regulatory Entity
Meets regularly with supervisors.

Licensure / Certification
Those who are licensed social workers have certification requirements but not all case workers are licensed social workers.

Training
All have minimum of college degree. Some have master's or other advanced degree(s). Receive ongoing training on a yearly basis; departments provide-varies by district.

Caseload
Varies with size and staffing of district.

Methods of Payment
County employee.

Interconnectedness & Relationships with Others

Works with individuals involved in the case-provides information, suggest services, locates services, amends treatment plans, monitors status, and locates and monitors placements. Must advise all parties/individuals involved in case of any change in the status quo.

ACCESSIBILITY / AVAILABILITY

All counties have a Department of Social Services with Child Protective Service workers.

Title

MEDIATOR

DEPENDENCY AND NEGLECT

Who They Represent

The mediator is a neutral third party. Court may enter an order for mediation on contested cases or to resolve disputes on any other issues at any stage upon request of either party or a motion entered by the Court can order both parties to participate in mediation (in some jurisdictions this is a standing order) or parties on their own can seek the help of a mediator, sometimes before they even file the petition. Mediation can be used in both expedited permanency planning cases and in other D&N litigation. Issues that may be mediated include: adjudication, treatment plan, termination and custody placement.

Description of Role

The mediator helps the parties identify pertinent issues and come

to mutually acceptable agreements on those issues. The mediator does not impose or recommend solutions but lets the
parties develop the agreement.

Statutory Authority

CRS 13-22-301 Dispute Resolution Act
CRS 13-22-302(2.4) Mediation defined

Accountability / Regulatory Entity

The mediation agreement is not binding until approved by the Court. Once an agreement is reached, the mediator usually drafts a memorandum of understanding. The judge or magistrate reviews the agreement and may approve it as an order
of the Court.

Licensure / Certification

None

Training

ODR requires 40 hours of training.

Caseload

Varies with size of district.

Methods of Payment

Private pay by parties. Exception is when parties meet indigency guidelines. In this situation state has grant funds which cover costs.

Interconnectedness & Relationships with Others

Neutral third party.

Accessibility / Availability

Not every judicial district has a mediation program but the judicial branch Office of Dispute Resolution has mediators available to provide services in 20 of the 22 districts.

Title
CASA(COURT APPOINTED SPECIAL ADVOCATE) DEPENDENCY AND NEGLECT
Who They Represent
Represents the child(ren)'s best interest.
Description of Role
Functions differently depending on the model. As a friend of the Court completes an independent investigation and files a report with recommendations based on the child's best interest
and may testify at trial. May cooperate with GAL but not mandatory. In other cases CASA is an assistant to the GAL and
in this role does not make independent recommendations.
Statutory Authority
CRS 19-1-201 et.seq.
Accountability / Regulatory Entity
CASA agencies screen, train, and supervise volunteers. They provide oversight of the volunteer's work. Criminal and central
registry record checks are made for each applicant.
Licensure / Certification
National CASA is in the process of developing a quality assurance component to include a self-evaluation and outside agency site visits.
Training
New volunteers are fully trained and must attend at least 30 hours of in-service training a year.
Caseload
One or two cases at a time.
Methods of Payment
Volunteers – payment not involved.
Interconnectedness

& Relationships with Others

The appointment order by the Court should give the CASA access to documents and individuals necessary. The GAL, Department of Social Services and other agencies must cooperate and share information with the CASA. The CASA volunteer is prohibited from disclosing the information to anyone other than the Court and the parties involved in the case.

Because of the limited caseload, the volunteers have time to gather information and talk with other individuals.

Accessibility / Availability

Not every judicial district has a CASA program. If additional funds were available there could be more programs to screen, train, and supervise volunteers.

Title

COURT FACILITATOR
DEPENDENCY AND NEGLECT

Who They Represent

State employee; works for the judicial district.

Description of Role

Provides case management and facilitation services. Tracks time and progress on D&N cases. Conducts conferences and facilitates communication between parties. Makes reports to the Court regarding permanency planning goals and timeliness in individual cases and status conferences.

Statutory Authority

None

Accountability / Regulatory Entity

Supervised by the Judicial Officers in the district and/or District Administrator.

Licensure / Certification
None
Training
Legal and/or social work experience with a private family or children's service agency or related experience is preferred.
Caseload
The judge assigns cases in need of facilitation. Often times a court facilitator is asked to follow up on compliance with a court
order.
Methods of Payment
State employee.
Interconnectedness & Relationships with Others
Court facilitators hold status conferences with Department of Social Services, the attorneys, family, relatives and service providers to exchange information, evaluate alternatives and resolve disputes.
Accessibility / Availability
All judicial districts have at least a 1/2 time court facilitator.
title
SPECIAL ADVOCATES--GENERALLY
DOMESTIC RELATIONS
WHO THEY REPRESENT
Neutral. Provides information and recommendations to the Court.
DESCRIPTION OF ROLE
Investigates, reports, and makes recommendations to the Court
on any issues that affect or may affect the best interests of the child(ren); cannot file motions; can be called as a witness.
STATUTORY AUTHORITY

CRS 14-10-116

ACCOUNTABILITY / REGULATORY ENTITY

The court shall set forth the subject matter and scope of duties of such individual in a written order of appointment. Accountable to Court, and an attorney special advocate to Attorney Regulation Office.

LICENSURE / CERTIFICATION

None

TRAINING

CJD 97-02 requires 10 hours of CLE or other relevant courses.

There are no set requirements; skills in the areas of domestic relations and/or child advocacy as generally set forth in CJD 97-02.

CASELOAD

Discretion of individual special advocate.

METHODS OF PAYMENT

Paid by parents; if the parents are found to be indigent the state will pay according to Chief Justice Directive 97-02. OCR pays state pay attorney special advocates; non-attorney special advocates paid by SCAO.

INTERCONNECTEDNESS & RELATIONSHIPS WITH OTHERS

Gather information through interviews of family members, observation, specialized assessment techniques, contact with collateral sources, and document review.

ACCESSIBILITY / AVAILABILITY

Case by case basis; depends on resources of the parties, if not indigent.

TITLE

ATTORNEY—SPECIAL ADVOCATE

DOMESTIC RELATIONS

WHO THEY REPRESENT

Neutral. Provides information and recommendations to the Court.

DESCRIPTION OF ROLE

An extension of the court; investigates, reports, and makes recommendations on any issues that affect or may affect the best interests of the child(ren); cannot file motions; can be called as a witness.

STATUTORY AUTHORITY

CRS 14-10-116

ACCOUNTABILITY / REGULATORY ENTITY

Office of Attorney Regulation; if state pay, Office of the Child's Representative has additional oversight authority and can terminate contracts; also accountable to the Court as set forth in the written order of appointment.

LICENSURE / CERTIFICATION

Must be a licensed Colorado attorney.

TRAINING

CJD 97-02 requires 10 hours of CLE or other relevant courses.

There are no set requirements; skills in the areas of domestic relations and/or child advocacy asgenerally set forth in CJD 97-02; Office of the Child's Representative is providing some

training.

CASELOAD

Discretion of individual attorney.

METHODS OF PAYMENT

State paid: $45.00/hour out-of-court; $55.00/hour in-court; private $50-$300 per hour.

INTERCONNECTEDNESS & RELATIONSHIPS WITH OTHERS

Gather information through interviews of family members, parties, children, teachers, medical providers etc., observation, contact with collateral sources, and document review. Conduct investigation and make recommendations.

ACCESSIBILITY / AVAILABILITY

Case by case basis; depends on resources of the parties, if not indigent.

TITLE

MENTAL HEALTH—SPECIAL ADVOCATE

DOMESTIC RELATIONS

WHO THEY REPRESENT

Neutral

DESCRIPTION OF ROLE

Investigates, reports, and makes recommendations to the Court on any issues that affect or may affect the best interests of the child(ren); may be called as a witness.

STATUTORY AUTHORITY

CRS 14-10-116

ACCOUNTABILITY / REGULATORY ENTITY

None.

LICENSURE / CERTIFICATION

None required.

TRAINING

None required.

CASELOAD

Discretion of individual special advocate.

METHODS OF PAYMENT

State paid $20.00/hour; private whatever rate they set.

INTERCONNECTEDNESS & RELATIONSHIPS WITH OTHERS

Gather information through interviews of family members, observation, specialized assessment techniques, contact with collateral sources, and document review.

ACCESSIBILITY / AVAILABILITY

Case by case basis; depends on resources of the parties, if not indigent; state pay rate is so low—can be difficult to find those willing to accept these appointments.

TITLE

CASA—SPECIAL ADVOCATE

DOMESTIC RELATIONS

WHO THEY REPRESENT

Neutral

DESCRIPTION OF ROLE

They are an extension of the court; they make recommendations as to the child's best interest; working for the court; primarily used in domestic cases in 4th and 18th judicial districts.

STATUTORY AUTHORITY

CRS 14-10-116; not named in statute but use accepted in some districts.

ACCOUNTABILITY /

REGULATORY ENTITY
CASA agency.
LICENSURE / CERTIFICATION
Whatever CASA requires.
TRAINING
By CASA agency.
CASELOAD
Heavy case load because need is so great and they do not cost anything.
METHODS OF PAYMENT
None. CASA agencies do not receive compensation under the current arrangement. Volunteers.
INTERCONNECTEDNESS & RELATIONSHIPS WITH OTHERS
Gather information through interviews of family members, observation, specialized assessment techniques, contact with collateral sources, and document review.
ACCESSIBILITY / AVAILABILITY
CASA nonprofit agencies exist in 12 of the 22 judicial districts.
TITLE
DELETE
GUARDIAN AD LITEM IN MENTAL HEALTH DOMESTIC RELATIONS
WHO THEY REPRESENT
If petitioner or respondent is incapacitated a GAL could be appointed for that ADULT and does not represent the children
who are the subject of the action; this happens with some frequency when individuals with mental health or developmental

disabilities issues are involved; appointment by the court; attorney brings to judge's attention the need for this advocate.

DESCRIPTION OF ROLE

Represents the petitioner or respondent best interests.

STATUTORY AUTHORITY

General statutory authority for anybody who is incapacitated to have GAL appointed.

ACCOUNTABILITY / REGULATORY ENTITY

The appointment of a GAL continues until the court's jurisdiction ends or the court terminates the appointment.

LICENSURE / CERTIFICATION

A GAL must be a licensed Colorado attorney.

TRAINING

CJD 97-02 requires 10 hours of CLE or other courses related to the appointment; continuing CLE requirements.

CASELOAD

Discretion of individual attorney.

METHODS OF PAYMENT

State pays: hourly - in-court: $55.00/hour, out-of-court: $45.00/hour

INTERCONNECTEDNESS & RELATIONSHIPS WITH OTHERS

Interacts with others involved in the particular case.

ACCESSIBILITY / AVAILABILITY

Case by case basis; depends on the resources of the parties, if not found indigent.

TITLE

CHILD LEGAL REPRESENTATIVE (CLR)
DOMESTIC RELATIONS

WHO THEY REPRESENT
Represents the best interests of the child(ren).
DESCRIPTION OF ROLE
Attorney/client relationship; the distinction between the CLR and the special advocate is that the special advocate does not have a representation relationship with the child , whereas the CLR does; also may not be called as a witness.
STATUTORY AUTHORITY
CRS 14-10-116
ACCOUNTABILITY / REGULATORY ENTITY
Attorney Regulation; Office of the Child's Representative has
oversight authority on state pay
LICENSURE / CERTIFICATION
Must be a licensed Colorado attorney.
TRAINING
CJD 97-02 requires 10 hours of CLE or other relevant courses;
continuing CLE credits.
CASELOAD
Discretion of individual attorney.
METHODS OF PAYMENT
Parties pay unless a finding of indigency; if the parties are found
indigent, the state will pay according to CJD 97-02 in-court: $55.00/hour, out-of-court: $45.00/hour.
INTERCONNECTEDNESS & RELATIONSHIPS WITH OTHERS
Gather information to represent the best interests of the child(ren) as to all issues identified in the order of appointment.
ACCESSIBILITY /

AVAILABILITY
Case by case basis; depends on the resources of the parties, if not indigent.
TITLE
MEDIATOR
DOMESTIC RELATIONS
WHO THEY REPRESENT
Neutral. Court may order upon request of either party or a motion entered by the court can order both parties to participate
in mediation (in some jurisdictions this is a standing order) or parties on their own can seek the help of a mediator, sometimes
before they even file the petition.
DESCRIPTION OF ROLE
The mediator helps the parties identify pertinent issues and come
to mutually acceptable agreements on those issues; the mediator
does not impose or recommend solutions but lets the parties develop the agreement.
STATUTORY AUTHORITY
CRS 13-22-302; Colorado has a general mediation statute addressing how mediation is to be conducted.
ACCOUNTABILITY / REGULATORY ENTITY
The mediation agreement is not binding until approved by the court; once an agreement is reached the mediator usually drafts a
memorandum of understanding; the judge or magistrate reviews
it and may approve and enter as an order of the court.
LICENSURE / CERTIFICATION
None

TRAINING
No set rules; ODR requires 40 hours of training.
CASELOAD
Discretion of individual mediator.
METHODS OF PAYMENT
Parties are responsible for payment; sliding scale in the judicial
branch Office of Dispute Resolution.
INTERCONNECTEDNESS & RELATIONSHIPS WITH OTHERS
Only dealing with parties.
ACCESSIBILITY / AVAILABILITY
ODR has mediators available to provide services in 20 of 22 judicial districts.
TITLE
COURT FACILITATOR (DR)
DOMESTIC RELATIONS
WHO THEY REPRESENT
Neutral. Employee of the court.
DESCRIPTION OF ROLE
Provides case management and facilitation for domestic relations matters.
STATUTORY AUTHORITY
None
ACCOUNTABILITY / REGULATORY ENTITY
Judge, district administrator.
LICENSURE / CERTIFICATION
Not required; three years experience.
TRAINING
SCAO provides; all court facilitators were provided training at

the January 2002 judicial branch Family Issues Conference.

CASELOAD

Very heavy.

METHODS OF PAYMENT

Judicial branch employees.

INTERCONNECTEDNESS & RELATIONSHIPS WITH OTHERS

With court personnel, parties, counsel, everyone involved in the case.

ACCESSIBILITY / AVAILABILITY

Every district has at least a half time domestic relations court facilitator.

TITLE

PARENTAL RESPONSIBILITY EVALUATOR DOMESTIC RELATIONS

WHO THEY REPRESENT

Neutral. Is appointed by the court upon a motion entered by either party or the court.

DESCRIPTION OF ROLE

Completes evaluations and makes recommendations to the court and parents regarding parental responsibilities and parenting times then makes recommendations to the court. This is a comprehensive and time-intensive process.

STATUTORY AUTHORITY

CRS 14-10-127

ACCOUNTABILITY / REGULATORY ENTITY

None

LICENSURE / CERTIFICATION

Statute requires report by licensed mental health professional

and probation department or county or district social services department.

TRAINING

CRS 14-10-127 (4)

CASELOAD

Varies district by district and in many districts use of special advocates has cut number of full scale evaluations.

METHODS OF PAYMENT

State pays if parties indigent; rates fluctuate for private pay; $10,000 or more not unrealistic.

INTERCONNECTEDNESS & RELATIONSHIPS WITH OTHERS

By statute evaluator may contact any person who may have information about the child or child's potential parenting arrangements.

ACCESSIBILITY / AVAILABILITY

Available by districts as required by statute.

TITLE

PARENTING COORDINATOR

DOMESTIC RELATIONS

WHO THEY REPRESENT

Best interests of children in role of working with parent/child relationship.

DESCRIPTION OF ROLE

Appointed by some judicial officers in very high conflict cases where parents file multiple motions regarding every small detail of their parenting relationship. Sets up a third party for parents to communicate through; role defined by the court.

STATUTORY AUTHORITY

None

ACCOUNTABILITY / REGULATORY ENTITY

None

LICENSURE / CERTIFICATION

Only such as required by their specific profession.

TRAINING

No set requirements.

CASELOAD

Discretion of individual.

METHODS OF PAYMENT

Parties pay rates of individual parenting coordinator.

INTERCONNECTEDNESS & RELATIONSHIPS WITH OTHERS

Provide information to courts.

ACCESSIBILITY / AVAILABILITY

Appointed by some courts on a case-by-case basis.

INTRODUCTION

The Office of Dispute Resolution (ODR) was created by the Colorado Dispute Resolution Act in 1983. The ODR's mission is to establish or make available dispute resolution programs and related services throughout the state, as designated by the Chief Justice of Colorado's Supreme Court. These programs and services include multi-door courthouses, which provide access to case screening to match cases to appropriate dispute resolution processes, as well as the processes themselves: mediation, arbitration, ADR settlement conferences, and other types of alternatives to litigation. ODR works to educate judges and staff about the benefits of ADR, and to assist them in designing and implementing dispute resolution programs. ODR also works, through the courts and directly, to educate lawyers and the general public about appropriate dispute resolution, and to promote the use of ADR in the state. The courts were encouraged to expand use of the Dispute Resolution Act by HJR 97-1020.

ODR also assists with the development of statewide policies regarding the use of ADR, advising the judicial, executive, and legislative branches of government in the state. ODR monitors legislation relating to ADR, and sometimes testifies for or against a proposed statute or amendment. ODR also introduces appropriate legislation relating to ADR. ODR provides information, technical assistance, and ADR services

to state and local government agencies, and consults regarding the design, implementation, and administration of dispute resolution programs, upon request. ODR also provides information nationally and internationally about Colorado's dispute resolution programs. In order to maximize its ability to carry out its mission, ODR collaborates with other individuals and organizations, including governmental units such as bar associations, community mediation centers, schools, private and public dispute resolution programs, and others to increase access to dispute resolution services.

ODR's ultimate goals in carrying out its mission are (1) to increase access to justice in the form of affordable, effective, appropriate, and humane methods of dispute resolution; (2) to decrease inappropriate methods of dispute resolution, including physical and psychological violence; and
(3) to provide an alternative to protracted or bitter litigation. ODR is cash-funded through clientfees prescribed by order of the Supreme Court.

OVERVIEW OF ADR SERVICES

ODR first began mediating cases in FY 1985, with a total of 54 domestic cases. In FY 2000, an estimated 3,912 domestic

relations, civil, juvenile, dependency and neglect, and probate cases were filed with ODR, of which 2,557 were mediated or provided other ADR services (the remaining cases were withdrawn by the parties for a variety of reasons, including settlement prior to mediation). These cases originated in 19 of the state's 22 judicial districts. Over the last 10 years, ODR has mediated or provided other ADR services in over 19,000 cases. The resolution rate for the ODR contract mediation services of cases appropriate for ADR during FY 2000 was 64%. An additional 14% settled after the ADR session or left with a proposal for settlement. Only 17% of cases appropriate for ADR did not reach or make progress toward resolution. In cases involving parenting issues, ODR provides free mediation and parenting coordination for indigent parties, and subsidized services for low-income parties, through the Federal Access and Visitation Grant program.

ODR opened its first multi-door courthouse,[1] in the Eighteenth Judicial District in Arapahoe County, in October 1995. Multi-door programs provide access to case screening to match cases to appropriate dispute resolution processes. In FY 1999, the number of multi-door programs increased to four. The Second Judicial District Domestic Post Decree Multi-Door Pilot Project, in which magistrates screen and refer cases to one of five ADR processes or maintains the case on a litigation track, has been recommended as a model for statewide use. In connection with the multi-door

programs, additional services have been provided through retired judges (case screening and ADR settlement conferences), parenting coordinators, and attorney volunteers. Senior judges also administer and serve as neutrals for the Colorado Appellate Court settlement program, which has saved hundreds of hours of judge, clerk and staff time.[2]

Actual and Projected Caseload, FY 1999 – FY 2002

Item	FY 1999 Actual	FY 2000 Actual	FY 2001 Estimate	FY 2002 Projection
Multi-Door Courthouses	4	4	5	6
Senior Judge Case Screening Caseload	412	421	425	425
Senior Judge Case Screening Conferences	182	148	150	150
Senior Judge ADR Settlement Conferences	50	121	126	131
ADR Cases Filed	3,647	3,9123	4,226	4,647
Cases Mediated	2,379	2,481	2,674	2,939
Parenting Coordination Cases	50	45	49	55

Other ADR Processes	—	37	39	43
Total ADR Processes Provided (nonsenior judge)	2,429	2,557	2,762	3,037
Cases Referred to ADR by the Courts	8,600	9,3894	12,000	14,000

1 Multi-door courthouses offer more than one choice of process to resolve a dispute.
2 Current statistics from this program are unavailable.
3 Estimate based on ICON reports. Actual figures were unavailable due to a new computer tracking system.
4 Estimate based on ICON reports. Actual figures were unavailable due to a new computer tracking system.
\2 Several new programs were developed by ODR in FY 1999 and FY 2000. Other programs were expanded, and the groundwork was laid for more new programs to begin in FY 2001.

NEW AND EXPANDED PROGRAMS: FY 1999

NEW PROGRAMS

Integrated Computer System Case Tracking

Court Referrals to ADR

During FY 1999, ODR worked with the State Court Administrator's Office (SCAO) information services

division and others to design and implement on the Integrated Colorado On-Line Network ("ICON" - the judicial statewide integrated computer system) a method for tracking the number of case referrals to ADR by the courts and the results of those referrals. Implementation of ADR codes began in January 1999. It will take some time to increase the accuracy of the data entry and retrieval.

ODR Case Tracking

During FY 1999, ODR worked with the SCAO information services division to design and implement on ICON an ADR Module to streamline ODR's intake and record-keeping processes. The system was implemented in FY 2000. As the module is further developed, ODR anticipates increased efficiencies in its operations and the availability of additional data regarding ODR programs and services.

Services for Never-Married Parents

Perry Street Center

Near the end of FY 1999, ODR was asked by Denver's Center for Policy Research to provide mediation services to a newly created pilot project, called the Perry Street Center. This project provides a number of

services for those men and women who have just been released from the State Penitentiary in Cañon City. ODR was called upon to provide mediation services for those families that are attempting to reintegrate the ex-felon parent with his or her children in a safe and supportive manner. While mediation services are primarily provided to never-married parents, a substantial number of cases involve those parents who have been, or still are, married and who want to address issues of parental responsibility (custody) and/or parenting time (visitation). Two ODR mediators, experienced in dealing with issues involving ex-felons, were made available to the pilot project on an as-needed basis. In addition, a never-married parent par3

enting education seminar was provided to the project until the Denver Juvenile Court's
seminar series (see below) began.

Denver Juvenile Court

This court has jurisdiction over all paternity cases, as well as juvenile parental responsibility and parenting time motions, for the state's largest district. Working in cooperation with the Denver Juvenile Court, the ODR in mid-FY 2000 assigned two mediators experienced in working with the never-married population to mediate all referred cases from the court. Over the last five

months of FY 2000, ODR mediated 23 cases specifically referred by the Denver Juvenile Court.

Eighth Judicial District Pilot Project

Working in conjunction with a Fort Collins coalition that included a nonprofit community service group, a local mental health professional, and a representative from Larimer County's Department of Social Services, ODR subcontracted with The Family Center/La Familia to provide services to the never-married population in the Eighth Judicial District. These services included redesigning the letter sent to potential fathers in paternity cases to provide them with more information about mediation and counseling services, providing education and counseling to those parents who requested the services, providing mediation services to assist in working out parenting issues, and assigning older never-married fathers to mentor younger ones in developing their parenting skills.

Parent Education Programs

At the suggestion of a rural judicial district judge, ODR began to develop in FY 1999 a parent education cirricula that could be used to provide seminars for divorced parents in rural unserved or underserved districts. Two separate

curricula were developed at first — one for low-conflict parents, which demonstrated co-parenting techniques, and one for high-conflict parents, which used parallel parenting principles. In FY 2000, a third curriculum was added that was specifically developed for the never-married parent population.

Underwritten by Federal Access and Visitation grant funding, ODR planned a comprehensive program to train court-selected presenters in the developed curricula and to assist the rural districts in implementing the seminars on a monthly basis. In addition, ODR assisted districts in planning for local funding of the seminars after the first year of support under the federal grant. A five-hour presenters' training session was held in FY 2000, with representatives of four judicial districts attending. Subsequently, one rural district implemented the parenting education seminars on a monthly basis, two more used the ODR materials in their own existing programs, and three more districts began active planning to implement parenting education seminars in their districts.

Recognizing that no commercial provider in the metro Denver area offered parenting education for the high-conflict population, two jurisdictions contacted ODR to plan seminars on parallel parenting techniques to begin in FY 2001. In addition, the Denver Juvenile Court asked ODR to assist in providing parenting education seminars twice a month at the Denver Courthouse. ODR staff taught the seminars,

beginning in late FY 2000, and subsequently trained an independent contractor who took over responsibility for providing the seminars in FY 2001.

Mediation Programs

ODR began new local domestic relations programs in four rural judicial districts in Colorado: the Third (Las Animas and Herfano counties), Eleventh (Fremont, Park, Chaffee, and Custer counties), Thirteenth (Morgan, Logan, Sedgwick, Phillips, Yuma, Washington, and Kit Carson counties), and Fifteenth (Prowers, Kiowa, Cheyenne, and Baca counties) Judicial Districts. Mediators from these new programs also enabled ODR to make services available to a fifth rural district, the Sixteenth Judicial District (Otero, Crowley, and Bent counties) and to the rural Lincoln County in the Eighteenth Judicial District.

ODR also worked with the courts, county social service programs, and others to develop a mediation program for dependency and neglect cases in the Eleventh Judicial District.

Policy Development

Vision and Consensus on Role of ODR and Expansion of 198-A

Public/Private Consensus Ad-Hoc Committee: ODR joined with the Colorado Council of Mediators and Mediation Organization (CCMO) Public/Private Consensus Ad-Hoc Committee to consider issues relating to the relationship between the public and private sectors in providing ADR services. A survey designed by the committee and implemented by CCMO revealed that most CCMO members did not provide services exclusively in one or the other arena, but rather tended to provide services in both arenas. Thus, individual service provider's interests were not clearly divided.

Coalition on Aging, Disability, and Dispute Resolution: With the help of a $2,000 mini grant received from the ABA by the University of Denver College of Law, ODR joined several other organizations to plan and hold a conference on October 1–2, 1999, "Collaborative Dispute Resolution: Meeting the Needs of Older Adults and People With Disabilities." The intent of the conference was to educate participants and encourage the development of coalitions and pilot projects among individuals and

organizations doing work in these areas.

Promotion of Consensus Processes in Government: ODR continued to be a participant in the ADR in Government subcommittee of the Colorado Bar Association ADR Forum Committee. ODR joined the subcommittee in sponsoring and presenting at trainings for state agency representatives on October 28, 1998, and January 27, 2000. The first training focused on ADR in general and mediation in particular. The second training focused on ADR systems design. Attendance at the trainings was encouraged both years in letters signed jointly by the Chief Justice of the Colorado Supreme Court, the Governor, and the Attorney General.

ODR continued to be available to consult with state agencies concerning ADR systems design, and to provide ADR services and training. In FY 1999, ODR began providing mediation services to the Division of Vocational Rehabilitation, and in FY 2000, ODR provided an "Introduction to Mediation" training for trainers to the Colorado Department of Transportation.

Mediator Competency

Colorado Model Standard of Conduct for Mediators: ODR joined with the Colorado Department of Law, the Colorado Judicial Institute, the Colorado Bar Association ADR Forum Committee, and the Colorado Council of Mediators and Mediation Organizations to develop the voluntary "Colorado Model Standards of Conduct for Mediators." ODR will include the Model Standards in its anticipated FY 2001 revision of the ODR Policies and Procedures Manual.

Supreme Court District and County Court Civil Jurisdiction and Access Committee

Rule 26.3: ODR was an active member of the Supreme Court District and County Court Civil Jurisdiction and Access Committee, which recommended mandatory ADR and simplified rules of discovery for cases certified as "Limited Claims Cases" under $50,000. The Supreme Court adopted the rule on January 20, 2000, effective July 1, 2000.

Domestic Relations Multidisciplinary Committee

Best Practices Recommendations: ODR was an active member of the Domestic Relations Multidisciplinary Committee, which finalized and submitted to the Chief Justice its Recommendations for Best Practices in the Resolution of Cases Involving Children. The report included a recommendation that the Second Judicial District Domestic Relations Post-Decree Multi-Door Pilot Project, created by ODR and Colorado's Second Judicial District (Denver), be a model for replication in other judicial districts in Colorado.

Community Mediation Funding

ODR consulted with the Colorado Community Mediation Coalition regarding development of a legislative proposal for statewide funding for community mediation services. A bill for funding was introduced in FY 2000, but was unsuccessful. ODR continues to consult with the Coalition, and it is anticipated that the Coalition will introduce similar legislation in FY 2001.

High Risk Victim Offender Dialogue

In FY 2000, ODR attended a strategic planning training and began collaborating with Probation, Victim Services, Department of Corrections, and others to develop a strategic plan for Colorado high risk victim offender dialogue services. ODR anticipates that the group will finalize its proposal in FY 2001.

Training/Presentations/Publications

Training/Presentations

. • *Conflict Resolution Training* – Colorado Association of Court Employees Conference – Estes Park, Colorado, October 5, 1998.

. • *The State of the States: Dispute Resolution in the Courts* – Baltimore, Maryland, September 22, 1999 – panel presentation regarding vision for court-connected ADR programs; subsequent publication of remarks in the Cardozo Online Journal of Conflict Resolution.

.• *Society of Professionals in Dispute Resolution* – Baltimore, Maryland, September 23 - 25, 1999

.– panel presentations: Court-Connected Mediation Research; Diversity Issues; Coachingand Supervising New Mediators.

.• *Colorado Bar Association 101st Annual Convention* – Vail, Colorado, September 24 - 26, 1999

.– presentation regarding parenting education and pro se services in rural districts.

.• *Collaborative Dispute Resolution: Meeting the Needs of Older Adults and People With Disabilities*

.– Denver, Colorado, October 1 – 2, 1999, "Alternative Dispute Resolution 101."

. • *Father Initiative Conference* – Denver, Colorado, October 5, 1999 – presentation regarding mediation and other services concerning parenting issues.

. • *ODR Statewide Mediator Meeting* – Denver, Colorado, October 7, 1999.

. • *The Emerging Role of Mediation in the Judiciary* – Colorado Council of Mediators and Mediation Organizations topical law lunch, Denver, Colorado, November 4, 1999, panel presentation member.

. • *Second Annual Seminar on Mediation in State Government* – Denver, Colorado, November 18, 1999, ADR Systems Design.

. • *Family and Juvenile Judges Conference*, Englewood, Colorado, January 27 – 28, 2000, presentation regarding Second Judicial District Domestic Relations Multi-Door Pilot Project.

. ***Publications***

• W. Erickson and C. Savage, "ADR in Colorado," 54 *Dispute Resolution Journal* 60 (August 1999), reprinted 28 *The Colorado Lawyer* 67 (Sept. 1999) (attached).

7

. • "The State of the States: Dispute Resolution in the Courts" – Baltimore, Maryland, September 22, 1999 – panel presentation regarding vision for court-connected ADR programs; subsequent publication of remarks in the Cardozo Online Journal of Conflict Resolution.

PROGRAM EXPANSION

Several of ODR's ongoing programs were expanded in FY 1999 – FY 2000:

. • ODR's geographic coverage was expanded in three rural judicial districts, through contracts with additional ODR mediators in the Sixth (La Plata, San Juan, Archuleta counties), Seventh (Montrose, Delta, Gunnnison, San Miguel, Ouray, and Hinsdale counties), and Fourteenth (Grand, Routt, and Moffat counties) Judicial Districts.

. • Dependency and neglect mediation was expanded in the Eighteenth Judicial District (Arapahoe, Douglas, and Lincoln counties).

. • The renovation of the Arapahoe County Justice Center resulted in an increase to approximately 2,700 square feet in the Eighteenth Judicial District Multi-Door program space in FY 1999.

. • The Fourth Judicial District's parenting coordination program expanded to two mediators and now includes dependency and neglect cases in addition to domestic relations cases. The district is also in the process of developing programs in the area of restorative justice, and has successfully piloted use of a dog in dependency mediations. See *Protecting Children Magazine*, Vol. 15, No. 2, 1999.

. • Comparing FY 1998 with FY 2000, ODR's caseload more than doubled in the First (Jefferson and Gilpin counties) and Second (Denver city and county) Judicial Districts, doubled in the Seventeenth Judicial District (Adams county), and increased significantly (by 27%) in the Tenth Judicial District (Pueblo).

• An additional group of senior judges interested in providing ADR settlement conferences attended a training arranged by ODR, "Mediation Skills for Settlement Conferences," in March 1999.

RESEARCH AND EVALUATION

Dependency Mediation in the Fourth Judicial District

Nancy Thoennes of the Center for Policy Research in Denver, Colorado, completed her evaluation, "Dependency Mediation in Colorado's Fourth Judicial District," in October 1999. The evaluation confirmed the effectiveness of the Fourth Judicial District (El Paso and Teller counties) program in both quantitative and qualitative terms. The study concluded that approximately 70% of the cases sent to mediation were able to resolve all of the issues during the session, that the program provides cost avoidance and helps to avoid time delays, and that mediated agreements appeared to enjoy slightly better compliance, compared to non-mediated agreements. The study also found that, although there was initial resistance by professionals in the system, at the time of the study the professionals involved in the child welfare system viewed mediation as the best way to resolve disputes, certainly better than hallway negotiations and more effective than settlement efforts spearheaded by one of the parties.

Eighteenth Judicial District Multi-Door Courthouse in Arapahoe County

The National Center for State Courts completed its evaluation of the Eighteenth Judicial District Multi-Door Courthouse in Arapahoe County and issued its final report in May 2000. The report concluded that the majority of respondents had a favorable opinion of the Court Multi-Door Program and that the mediators received very high marks. The report also concluded that the ADR cases were closing faster than the non-ADR cases.

Second Judicial District Domestic Relations Post-Decree Pilot Project

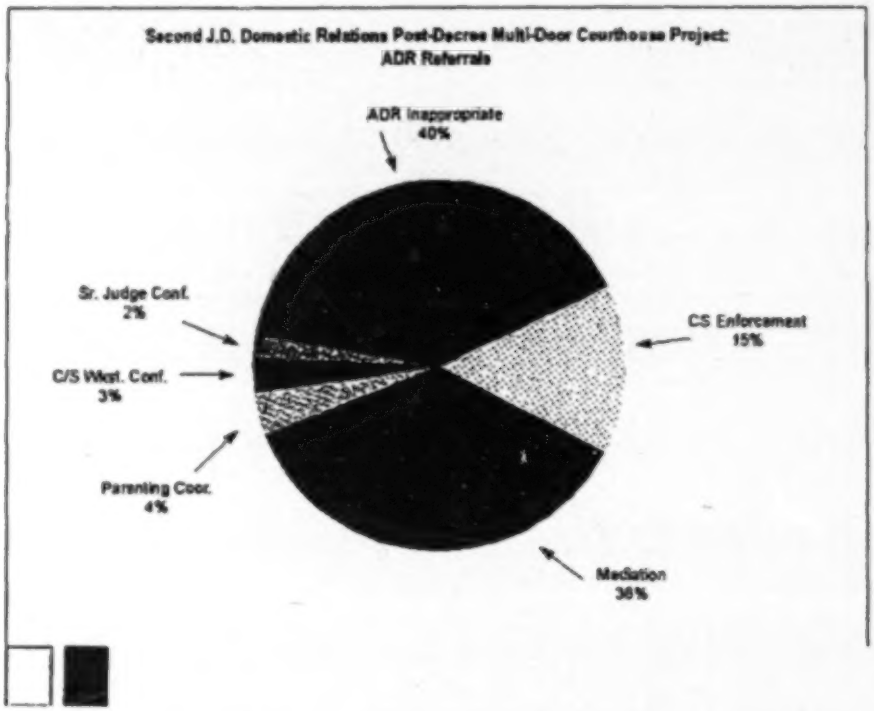
An evaluation of the Second Judicial District Domestic Relations Multi-Door Pilot Project, conducted by ODR, revealed that cases were closing approximately one-third faster when the first full year of the project (calendar 1999) was compared with the year prior to implementation of the project (calendar 1997): 1999, average age of case from reopen to reclose, 92 days; 1997, average age of case from reopen to reclose, 137 days. From the inception of the first phase of the program in March 1998 through June 30, 2000 (the program was fully implemented beginning in May 1998), a total of 2000 cases were screened by the magistrates. Thirty-six percent of the cases screened were referred to mediation, 15% to child support enforcement, 4% to parent-

ing coordination, 3% to child support worksheet conferences, and 2% were referred to senior judge ADR settlement conferences. Forty percent of cases were considered inappropriate for ADR; it is estimated that about half of these cases were resolved on the pleadings, thus eliminating any need for either ADR or further litigation. See the charts on the following page for more statistics from this evaluation.

Second J.D. Domestic Relations Post-Decree Multi-Door Courthouse Project: Program Inception Through June 30, 2000

ADR Door	Number of Referrals	ADRF	ADRP	ADRN	Pending	MTN W/Drawn	MTN Aband.	ADRV
Mediation	718	264	11	115	140	23	69	96
Parenting Coor.	89	38	0	13	19	1	12	6
C/S West Conf.	62	24	3	11	11	2	5	6
Sr. Judge Conf.	40	23	3	7	6	0	1	0
ADR Inapprop.	790							
CS Enforcement	301							
Total	2000	349	17	146	176	26	87	108

ADRF = Case completely resolved by ADR
ADRP = Case partially resolved by ADR
ADRN = ADR failed – case went to hearing and decision by magistrate
Pending = Case still pending
MTN W/Drawn = Motion withdrawn
MTN ABAND. = Motion deemed abandoned and denied
ADRI = ADR inappropriate
ADRV = ADR order vacated
ADRO = CS enforcement



GROUNDWORK FOR FY 2001 NEW AND EXPANDED PROGRAMS

FY 2001 is expected to be a year of evaluation, consolidation, and filling in the gaps in existing ODR programs as well as creating new Judicial Branch ADR

programs. ODR plans to continue its role in encouraging the use of ADR in the Executive Branch; further advancing the development of policy issues relating to ADR; and laying the groundwork for long-term planning.

ODR ADVISORY COMMITTEE

The ODR Advisory Committee was created and members appointed by the Chief Justice on September 5, 2000. The Committee is composed of 17 members, who will advise the ODR Director concerning policies and procedures, strategies for improving service delivery, and fees for ODR's services. The Committee will also recommend a long-term plan to maximize appropriate expansion and integration of multi-door courthouse and alternative dispute resolution approaches, and will make recommendations concerning the creation, expansion, administration and evaluation of ADR programs throughout the state. Committee members were selected based on geographic distribution throughout the state, and include a Supreme Court justice, judges, a magistrate, a district administrator, ODR representatives, and representatives of the Governor's office, the legislature, the Department of Law, the Colorado Bar Association, the Colorado Judicial Institute, the Colorado Council of Mediators and Mediation Organizations, community mediation, and restorative justice.

RESPONSE TO CIVIL JUSTICE REFORM RECOMMENDATIONS

In October 1999, Governor Owens issued Executive Order B-011-99, creating a statewide task force to give recommendations concerning Colorado's civil justice system. The Governor's Task Force on Civil Justice Reform focused on five areas, including ADR, and issued its Final Report in July 2000. The creation of the ODR Advisory Committee was a first step in responding to the Task Force recommendations concerning ADR. ODR will be reviewing the report and recommending additional responses in FY 2001.

REVISION OF ODR POLICIES AND PROCEDURES

The current ODR Mediation Policies and Procedures Manual was approved by the Chief Justice and made effective May 1, 1996. ODR plans a comprehensive review and revision of the Manual in FY 2001, to conform with changes in and additions to programs, policies, and implementation procedures.

ACCESS AND VISITATION GRANT PROJECTS

Using federal funding awarded in September 2000, ODR

plans to continue to provide free mediation services statewide for indigent parents with contested parenting issues, as well as partial payment for services for those parents who meet low-income criteria. Mediation services will be available to both divorcing and never-married parents, in both pre- and post-decree disputes involving parenting issues.

In addition, ODR plans to add training events for Special Advocates appointed under C.R.S. § 14-10-116(2)(b), and for those individuals that rural courts plan to appoint as Parenting Coordinators. ODR will continue to provide Parenting Coordinators to the Second Judicial District's Post-Decree Multi-Door Project.

Three more judicial districts plan to begin parenting education seminars, and potential presenters will be trained throughout FY 2001 for these districts, as well as for other rural districts that have indicated interest in providing seminars for divorcing and/or never-married parents. In addition, ODR is exploring the possibility of providing specific parenting education seminars for dependency and neglect cases, in cooperation with two judicial districts that are considering establishing a pilot project. These seminars will be offered along with an expanded program in mediation of dependency and neglect cases.

ODR was involved with the development and initial

presentation of a combined parent-child educational program that was inspired by Judge Ruthanne Polidori of the First Judicial District. The innovative curriculum was developed by three Denver-area mental health professionals, and the pilot program has been in operation since mid-FY 2000. The pilot project plans to expand to involve all divorcing parents and their children during FY 2001, and ODR has sought funding for the planned evaluation of the program.

ODR staff in the Fourth Judicial District have begun to develop a parent-and-child website, and a portion of the development costs will be paid by the federal grant. ODR also plans to provide interpreter services and translation of selected mediation materials during FY 2001, as well as increase specific outreach to the Native American population around the state. Finally, ODR is working with state-supervised parenting programs to plan potential educational events for volunteer staff, and to provide more networking ability between the metro-area and rural providers.

EVALUATION PROJECTS

ADR Cost Savings

Within the next two years, the Colorado Judicial Branch Office of Dispute Resolution ("ODR") will be required to justify its existence from the ground up based on the zero-based budgeting approach imposed on the Judicial and Executive Branches of government by the Colorado legis-

lature. In order for the Colorado legislature and the Judicial Branch to make informed decisions about whether to appropriate cash fund spending authority, state funds or court funds for court-connected alternative dispute resolution in civil cases, it is critical that information be generated to address the costs and savings associated with this type of intervention. Despite a philosophical commitment by the legislature and the Judicial Branch to non-adversarial dispute resolution, justifying programs and requesting program funds is fundamentally a practical matter of demonstrating cost-effectiveness. Thus, in FY 2001, ODR plans to seek funds for a research project to generate information as to whether ADR is saving money for Colorado's court system.

Client Survey

ODR has designed a customer survey, and anticipates surveying a portion of its clients in each of the next three fiscal years. ODR contracted with the National Center for State Courts to evaluate is multi-door program in the 18th judicial district, and this evaluation has provided some baseline data regarding customer perceptions related to ADR and customer satisfaction with ODR's services. The evaluation reported a high satisfaction rate among both ODR's clients and multi-door participants in general.

DEPENDENCY AND NEGLECT PROGRAMS

ODR anticipates providing mediators for a new dependency mediation program in the Second Judicial District (Denver), beginning in FY 2001. ODR is also working with the dependency and neglect case facilitator in the First Judicial District (Jefferson and Gilpin counties) to create a dependency mediation program for court-referred cases.

THE COLORADO JUDICIAL INSTITUTE ADR FORUM

ODR is actively involved in planning for the Colorado Judicial Institute (CJI) sponsored ADR Forum, which is scheduled for March 9, 2001. The ADR Forum is a one-day conference, which will review the current status of ADR in Colorado and explore future needs. CJI plans to hold the Forum on a regular basis, perhaps as often as every other year. ODR anticipates that the conference will generate new information and be an instrument in building a statewide consensus as to future directions for ADR in Colorado.

COMMUNITY MEDIATION FUNDING

ODR continues to consult with the Colorado Community Mediation Coalition concerning development of legislation to provide state funding for community mediation services in Colorado. It is anticipated that the Coalition will seek to have legislation introduced in FY 2001.

JUDICIAL BRANCH EMPLOYEE MEDIATION

ODR is consulting with the Judicial Branch Human Resources Division concerning development of mediation services for Judicial Branch employment disputes.

LONG-TERM PLANNING

ODR's goals for the year 2000 and beyond include providing to the state's citizens access to affordable, competent ADR professionals throughout the state, expanding the use and availability of ADR services through state agencies, and working in collaboration with other public and private ADR providers to accomplish these goals. In particular, ODR will continue to explore cutting-edge areas of ADR services, such as dependency and neglect mediation, victim offender mediation, ADR services for the elderly and the disabled communities, school-based mediation, community-based mediation programs, and consensus processes in government.

ATTACHED STATISTICS

Attached are the FY 1999 and FY 2000 statistics for the Judicial Branch's Office of Dispute Resolution.

The attached statistics include cases referred to ODR mediators, Colorado multi-door programs, and the Senior Judge ADR Program. The report does *not* include information regarding cases ordered to or voluntarily using ADR which were served by the private sector, or by other public sector

programs.

FURTHER INFORMATION ABOUT ODR

Further information about ODR's programs or other aspects of ADR can be obtained from Cynthia Savage, Director of the Office of Dispute Resolution, at (303) 837-3667.

Csindy.com

Public Eye
by Cara DeGette

Comment on this Story

OCTOBER 19, 2000:

The *Indy*'s Owen Perkins has been noted in a new compilation of the nation's most notable sports writing for his story about baseball in Castro's Cuba, which ran in the April 8-14, 1999 edition of the paper.

The story "Viva Beisbol!" -- in which Perkins went to Cuba to get the skinny on Cuba's national pasttime -- was his first article to appear in the paper. Since then, as the arts and entertainment editor, Perkins has managed to make theater and sports coverage a hand-in-hand endeavor.

The Cuba piece is noted in the 10th edition of the series *The Best American Sports Writing*, alongside such luminaries as *Sports Illustrated*'s Frank Deford and exiled novelist Salman Rushdie (who was noted for a story published in the *New Yorker*).

The Colorado Springs *Gazette*'s Raymond McCaffrey was also noted for his piece titled "Brother's Keeper," published Jan. 8, 1999. McCaffrey has since left the paper.

* * * * * * * * If Colorado Springs state Rep. Ron "The Phantom" May has his way, the four state Supreme Court Justices who are up for retention on this November's statewide ballot will be tossed out like rag dolls and replaced by Republican appointees.

All four justices were appointed under the administrations of Democratic Govs. Dick Lamm and Roy Romer. According to the blue book, distributed to all Colorado voters, all four have received high marks, with recommendations from the state Commission on Judicial Performance that they be retained.

The commission, which was created in 1988 to provide voters with what the book describes as "fair, responsible and constructive evaluations" of judges, is made up of bipartisan appointees of the governor, the chief justice, the president of the Senate and speaker of the House.

The state commission has recommended that all four Supreme Court justices -- Hon. Michael L. Bender, Hon. Alex J. Martinez, Hon. Nancy E. Rice and Chief Justice Hon. Mary J. Mullarkey -- be retained, noting attorneys and court personnel rated all of them highly overall.

But that's not good enough for May, who, by the way, claims his expertise is in computers and has no legal background. In an Oct. 9 letter to "fellow Republicans" and "Pro-Freedom Recipients" that is posted on the Colorado State Shooting Association's Internet site (www.cssa.org), May urged gun lovers and like-minded thinkers to use the opportunity to vote out the justices, since the retention of judges issue has gone "unnoticed" during the campaign but could have long-term effects on the state.

May, in case you've forgotten, is the state representative who refused public appearances and press interviews before he barely beat Douglas Bruce to win the GOP nomination in August to replace outgoing state Sen. Ray Powers in Senate District 10. May's Democratic opponent, college administrator Daniel Tafoya, faces an uphill battle in the heavily Republican eastern Colorado Springs district. And apparently May wants to make the state legislature -- which

is already controlled by Republicans, with a GOP governor -- a "super majority" by gettting rid of the Supreme Court justices and replacing them with Gov. Bill Owens' appointees.

In his letter, May targeted Chief Justice Mullarkey (which he incorrectly spelled Malarky) as a particularly juicy target. "We could have a Republican chief justice that makes the four appointments to the reapportionment commission," May crowed. "That could have a huge impact on the make-up of the redrawn House and Senate seats! Think about it. Get the word out!"

In short, what May is proposing is a Colorado Supreme Court that he believes would redraw districts to further favor Republicans.

May's letter includes an addendum by Colorado Springs gun activist Bernie Herpin who insists that the current Colorado Supreme Court failed to follow the constitution or state law when they tossed out his challenge to the SAFE gun-show loophole ban that will appear on the Nov. 7 ballot.

Just another reason to remember to vote.

* * * * * * * * On Oct. 13, *Salon* magazine revisited the glib, "some even say gleeful" way that George W. Bush gloated over the death penalty during the second presidential debate.

The GOP candidate, attempting to explain his opposition to hate crimes legislation, incorrectly claimed that all three of the men convicted of the brutal 1996 murder of James Byrd, the black man who was dragged to death behind a pickup truck, will be put to death. (Actually only two face execution.)

"Guess what? The three men who murdered James Byrd? Guess what's gonna happen to them? They're gonna be put to death!" Bush said excitedly. *Salon* noted that Bush then smiled and continued, "It's gonna be hard to punish them any worse once they get put to death."

Bush kept going, with what *Salon* describes as "an odd facial twitch that seemed to be his best effort not to smirk."

"We can't enhance the penalty any more than putting those three thugs to death. And that's what's gonna happen in the state of Texas."

-- degette@csindy.com

PRESS RELEASE

Colorado To Debut Free E-Filing, Courthouse Kiosks To Assist Low-Income Litigants Shut Out of Justice System

Chief Justice Mullarkey and Rep. DeGette: Grant means state will become technology leader in helping poor with legal problems

DENVER – Colorado Chief Justice Mary Mullarkey opened the doors of the Supreme Court Courtroom today to announce a federal grant that will establish Colorado as a national leader in using technology to help the state's low-income population access the civil justice system.

At a news conference also attended by Congresswoman Diana DeGette (D-CO) and Justice Gregory Hobbs, Colorado Legal Services was awarded $165,000 in federal funds to pioneer two new technology initiatives aimed at helping low-income litigants have their day in court – even if they cannot afford legal representation. The grant funds were awarded by Legal Services Corporation, the federal nonprofit agency created by Congress in 1974 to promote equal access to civil justice.

The first initiative – free electronic-filing of pleadings and court documents for low-income litigants – will allow self-represented (*pro se*) clients to go online to file their legal paperwork with the court system. The project will make Colorado the first state to make available *pro se* E-filing to those of limited financial means.

The second initiative is a pilot program that will debut at courthouses in Adams, Arapahoe, and El Paso Counties. Installed in each county courthouse will be a touch-screen,

self-help computer terminal, where users will interact with cutting-edge software to file their own claims in cases related to domestic violence, wrongful evictions, and small claims. The system, known as I-CAN! (Interactive Community Assistance Network), does not require its users to have any legal background or knowledge. Instead, it asks simple questions at a fifth-grade literacy level, in English or Spanish, and then outputs properly formatted pleadings that are electronically filed with the court.

"The reality is, 80 percent of low-income Coloradoans who qualify for free federal legal aid are currently being denied because of insufficient resources," LSC Vice President Mauricio Vivero said. "These ground-breaking projects will use technology to make our justice system accessible to the many law-abiding citizens who simply want a chance to make their case. Everyone deserves equal justice under law."

The new technology, which is being produced by LexisNexis™ CourtLink® and Legal Aid Society of Orange County, is expected to be operational by spring 2004.

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SUPREME COURT, U.S.
FILED
OCT 28 2005
OFFICE OF THE CLERK

No. 04-1730

IN THE

Supreme Court of the United States

TROY SCHWIEGERATH,
Petitioner,

v.

THE EIGHTEENTH JUDICIAL DISTRICT, the District,
THE DISTRICT COURT OF DOUGLAS COUNTY, the Court,
ANGELA ARKIN, the Judge
BETH-ELLIOTT DUMMLER, the Magistrate,
CHERYL LANE, the Clerk of the Court,
ELIZABETH HOLMAN, the Special Advocate,
and, **MARY MULLARKEY**, the Chief Judicial Administrator,
Respondents.

On Petition for Writ of Certiorari to the Colorado Supreme Court

PETITION FOR REHEARING

Petitioner: *Pro Se*
TROY SCHWIEGERATH
6955 POLK AVENUE
LITTLETON, CO 80123

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UNITED STATES CONSTITUTION AND CODE

Amendment I, of the United States Constitution:

Congress shall make no law respecting an establishment of

religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V, of the United States Constitution:

> No person shall be deprived of life, liberty, or property, without due process of law.

Amendment XIV, of the United States Constitution:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1257, of the United States Code:

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court

of a State" includes the District of Columbia Court of Appeals.

42 U.S.C. § 1983 of the United States Code:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

COLORADO STAUTES

Section 14-10-116.5 of the Colorado Revised Statutes:

> (1) The court may, upon the motion of either party or upon its own motion, appoint an individual to serve the court as a child and family investigator pursuant t to subsection (2) of this section in a domestic relations proceeding that involves allocation of parental responsibilities. The court shall set forth the specific duties of the child and family investigator in a written order of appointment. The same person may not serve as both the legal representative of the child pursuant to section 14-10-116 and as the child and family investigator for the court pursuant to this section.

(2) A child and family investigator appointed by the court may be an attorney, a mental health professional, or any other individual with appropriate training, qualifications, and an independent perspective acceptable to the court. The child and family investigator for the court shall investigate, report, and make recommendations as specifically directed by the court in the appointment order, taking into consideration the relevant factors for determining the best interests of the child as specified in section 14-10-124. The child and family investigator shall make independent and informed recommendations to the court, in the form of a written report filed with the court, unless otherwise ordered by the court. While the child and family investigator shall consider the wishes of the child, the child and family investigator need not adopt such wishes in making his or her recommendations to the court unless they serve the child's best interests as described in section 14-10-124. The child's wishes, if expressed, shall be disclosed in the child and family investigator's written report. The child and family investigator may be called to testify as a witness regarding his or her recommendations. The child and family investigator shall comply with applicable provisions set forth in chief justice directives, and any other practice or ethical standards established by rule, statute, or licensing board that regulates the child and family investigator. (3) The court shall enter an order for costs, fees, and disbursements in f avor of the child and family investigator appointed pursuant to subsection (1) of this section. The order shall be made against any or all of the parties; except that, if the responsible party is indigent, the costs, fees, and disbursements shall be borne by the state.

APPLICABLE UNITED STATES SUPREME COURT RULES

A Petitioner for Rehearing is rightfully submitted to this Court to present "circumstances of a substantial or controlling effect, or other substantial grounds not previously presented." *See* Sup. Ct. R. 44. This Petition is timely submitted within twenty-five days in accordance with this Court's practices and procedures. *See* Sup. Ct. R. 44(2).

THIS COURT'S AUTHORITY TO ISSUE THE WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

The Writ of Certiorari issues to correct the action of inferior courts, to enable the reviewing court to examine the action of an inferior court, and inform superior tribunals of issues pending adjudication. *See e.g., Madruga v. Superior Court of California*, 346 US 556 (1954). A supreme state court's judgment finally disposing of a petition is a final judgment under 28 USCS § 1257(a). *See Madruga v.* 346 US at 567. Magistate Beth Elliot-Dumler (hereinafter "the Magistrate") decided the Petitioner's rights under the Fifth Amendment of the United States Constitution on May 3, 2005. The Colorado Supreme Court dismissed the federal question summarily and without opinion on May 26, 2005. The Petitioner seeks Federal review of the Colorado Supreme Court's ruling regarding the constitutionality of C.R.S. § 14-10-116.5 (2005).

Not more than twenty-four hours after the Petitioner served the Magistrate with his Petition for Writ of Certiorari, the Magistrate instructed law enforcement officers to go the Petitioner's home and remove the minor child A.S. The Magistrate entered an order *nunc pro tunc* to support the instruction. (App. 4a) An officer of the court cannot enter

an order *nunc pro tunc* only to confer validity to action executed. *See Gray v. Brignbaredello*, 68 U.S. 627 (1864). The extent to which the Magistrate has exceeded her jurisdiction is unparalleled. Yet. state courts are bound to proceed in a manner that all substantial rights of the parties under controlling federal law are protected. *See Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 245 (1942).

The Magistrate states that her jurisdiction is premised upon "best interests" of the minor children. (App. 2a – 3a) The Magistrate also summarily issued a pecuniary penalty against the Petitioner in the "best interests" of the minor children. (App. 2a – 3a) State courts are without power to threaten a litigant's federal right with contempt proceedings. *See e.g. Donovan v. Dallas*, 377 U.S. 408 (1964). The assessment of pecuniary penalties against a parent in the minor child's A.S.'s "best interests" is outside the scope of the Magistrate's jurisdiction.

A minor has the right to due process under the Fourteenth Amendment. *See generally, In re Gault*, 387 U.S. 1 (1967). No exigent circumstances were adduced prior to the removal. (App. 1a – 4a). The minor child A.S. and the Petitioner are subject to the Magistrate's retribution as the rule of law. . (App. 14a – 17a). Due process requires decisions to be made through adversarial proceedings. *See United States v. National Treasury Employees Union*, 513 U.S. 454, 478 (1995).

The Petition for Writ of Certiorari establishes that the Magistrate ordered the Petitioner to pay private party to perform a public judicial function. Officers of the court may not collect fees for their decisions. *See e.g., Connally v. Georgia Supreme Court*, 429 U.S. 245 (1977). The Magistrate prevented the Petitioner from access to these private judicial proceedings. The right of access to judicial proceedings is a fundamental right.

The practice of delegating judicial authority is an affront to the function and viability of a judicial branch. In addition, the delegation of judicial authority is not a function protected by judicial immunity. The Petitioner set forth that the Magistrate continues to obstruct his right of access to the courts. *E.g.* (App. 14a – 17a). The Petitioner and the minor child A.S. are entitled to notice and an opportunity to be heard. The Petitioner and the minor child A.S.'s rights to preserve the continuity of their relationship is subject to the most exacting due process protections. *See Wisconsin v. Yoder*, 406 U.S. 205 (1972). The due process clause requires a showing of parental unfitness as a jurisdictional constraint on family interference. *See Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *See also Planned Parenthood v. Casey*, 112 S. Ct. 2791 (1992).

It is well settled that, quite apart from the guarantee of equal protection that if a law "impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional." *See Harris v. McRae*, 448 U.S. 297, 312 (1980). Unless there is a showing of unfitness, the state has no compelling interest to warrant interference with the parent-child relationship. *But see*, C.R.S. § 14-10-116.5 (2005). A Colorado court may even initiate such interference *sua sponte*[1]. State trial court judges are allowed too much discretion in *every* case. *See Troxel v. Granville*, 530 U.S. 57, 84 (2000).

Children are not wards of the state. *See Troxel*, 530 U.S. at 75. Fit parents are presumed to act in furtherance of a child's best interests. *Id.* The presumption serves to protect litigant's due process rights to full and fair adjudication. Third parties including court appointees are not entitled to this presumption.

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[1] The statute permits a court to appoint a third party to "investigate" on its own motion. C.R.S. 14-10-116.5 (2005)

IT IS NOT THIS COURT'S ROLE TO AVERT RESOLVING CONFLICT BETWEEN STATE LAW AND CONSTITUTIONAL MANDATE

Maintaining federal supremacy is this Court's primary function. *See e.g. Wissner v. Wissner*, 481 U.S. 655 (1950). The task falls directly on this Court to harmonize state and federal law with the tenets of due process and equal protection. *See e.g. Griswold v. Connecticut*, 381 U.S. 479 (1965). This Court must address the conflict.

This Court's function is meaningless if inferior tribunals fail to comply with this its precedent. *E.g.* (App. 14a – 17a) The Colorado Supreme Court has failed to ensure compliance with federal law. The Magistrate continues to issue summary orders without affording notice and an opportunity to be heard to the Petitioner and to the minor child A.S. *See e.g.* (App. 1a – 4a) The Colorado Supreme Court has passed on addressing these issues.

This Court 's role cannot be sustained without adherence to federal law by judges of inferior tribunals. The Petitioner's *pro se* status was employed to deny him constitutional due process and equal protection under the law. (App. 1a – 17a) The Magistrate has escalated the pattern of retaliation and retribution for the Petitioner's filings. *See e.g.* (App. 14a – 17a)

THE FACTS AND CIRCUMSTANCES ALLEGED BY THE PETITIONER ARE ACTIONABLE UNDER 42 U.S.C. § 1983

In the interests of judicial economy this Court should address the Petitioner's constitutional issues as raised. The intervening official action identified by the Petitioner

constitutes a cause of action under 42 U.S.C. § 1983. *See e.g. Dykes v. Hoseman*, 743 F.2d 1488 (1984). The Petitioner's claims arose as retribution for filing his Petition for Writ of Certiorari. (App. 1a - 4a) It does not follow that the Petitioner must seek relief in a lower federal court.

THE STATUTE IS CONTRARY TO LAW

A constitutional challenge necessitates facial scrutiny of C.R.S. 14-10-116.5 (2005). *See Matthew D. Adler, Rights Against Rules: The Moral Structure of American Constitutional Law*, 97 Mich. L. Rev. 1, 157 (1998). The Statute will not survive strict scrutiny. *See generally*, C.R.S. 14-10-116.5. This Statute reaches a substantial amount of constitutionally protected conduct. *See Hoffman Estates v. Flipside*, 455 U.S. 489 (1982). This Court does not need to define the precise scope of the rights at issue if the statute does not provide the necessary due process protections. *Id.*

The Statute permits a court to appoint an individual for the parties to compensate on its own motion. *See* C.R.S. 14-10-116.5 (2005). The Statute does not provide procedural protection for parents and children who have the right to remain free from artificially induced proceedings where adjudication is complete. *But see*, C.R.S. 14-10-116.5 (2005). The "best interests" of children are not served by this imposition. *But See* C.R.S. 14-10-116.5 (2005). The statute provides no minimal procedural protections to preserve continuity for children and families' constitutionally protected relationships. *But See* C.R.S. 14-10-116.5 (2005).

The statute provides, "the court shall set forth the duties of such individual in a written order of appointment." C.R.S. 14-10-116.5 (2005). The absence of limitations and/or definitions of the scope of an appointee's role, power, compensation, results in abuse. A statute must contain language that provides fair notice of what conduct is

prohibited and provide enforcement authorities with sufficiently definite standards to ensure uniform and non-discriminatory enforcement of those prohibitions. *See* generally, *Hoffman Estates,* 455 U.S. 489 (1982); *But see,* C.R.S. § 14-10-116.5 (2005). This case illustrates the consequences of enforcing legislation which fails to comply with constitutional doctrine. An appointee's authority as the *Child and Family Investigator* appointed pursuant to 14-10-116.5 is unlimited. The *Child and Family Investigator* may assume the role of advocate, witness, psychologist, judge, and mediator. Moreover, courts are entitled to deny parents access to the *Child and Family Investigator*'s findings.

The freedom to associate is protected by the First Amendment. This Court has established that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns* , 427 U.S. 347, 373 (1976). A parent who is deprived of custody of his or her child—even temporarily—suffers thereby grievous loss and such loss deserves extensive due process protection. *See In the Interest of Cooper*, 621 P 2d 437 (10th Cir. 1980). Parents retain a vital interest in preventing irretrievable destruction of their family life. *See Santosky v. Kramer*, 455 US 745 (1982).

Persons faced with forced dissolution of their parental rights have a critical need for procedural protections. *See Id.* The parent in a change of custody case must be allowed an opportunity to rebut the conclusions of a report and to cross-examine the preparer. See Stern, Nat & Oehme, Karen: *The Troubling Admission of Supervised Visitation Records in Custody Proceedings*, 75 Temp. L. Rev. 271, 291 (2002). *Ex parte* adjudication without notice is not due process. *Dalton v. People ex rel. Moors*, 360 P.2d 113 (Colo. 1961). Persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. *See Boddie v.*

Connecticut, 401 US 371 (1971). The Magistrate denied the Petitioner access to the courts. State courts are also bound to proceed in a manner that all substantial rights of the parties under controlling federal law are protected. *See e.g. Board of Trustees v. Garrett*, 531 U.S. 356, 372 (2001).

PRO SE PETITIONS FOR WRIT OF CERTIORARI FILED WITH THIS COURT AND ADDRESSING PROCEDURAL ABUSE BY INFERIOR TRIBUNALS

Irrespective of the reasons for this Court's historic denial of *pro se* petitions for Writ of Certiorari, the statistics are not favorable. *See* Arthur D. Hellman, *Case Selection in the Burger Court: A Preliminary Inquiry*, 60 Notre Dame L. Rev. 947 (1985). This Court's function is contingent on public confidence.

The Petitioner proceeded in the trail court *pro se*. The rise in the number of pro se litigants in child and family cases has grown exponentially. The Petitioner has federal statutory right to act *pro se* in the proceedings at issue. *See e.g.*, 28 U.S.C. § 1654 (2005). *Pro se* litigants are routinely subject to procedural abuse. Edward M. Holt, *How to Treat "Fools": Exploring the Duties Owed to Pro Se Litigants in Civil Cases*, 25 J. Legal Prof. 167 (2001). To demonstrate, the Colorado Court of Appeals re-characterized the Petitioner's pleadings as Petition[s] for Rehearing three times before he did file a Petition for Rehearing. *See* (App. 5a – 13a)

This Court has established that *pro se* parties are entitled to additional protection from procedural abuse. *See e.g., Castro v. United States*, 540 U.S. 375 (2003). The proportion of *pro se* litigants in divorce courts is increasing exponentially. *See* Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics*

Conduct Them?, 67 Fordham L. Rev. 1879, 1884 (1999).

Over thirty-three million Americans are divorced. NCHS, *Monthly Vital Statistics Report*, Vol. 43, No. 13 (October 23, 1995). Every adult and minor child of these dissolved marriages is entitled to the protection of their respective fundamental rights. Every minor child of these dissolved marriages is potentially subject to *ex-parte* orders regarding their "best interests." These minor children may be removed from their homes without notice or a hearing only because they are children of divorced parents. *E.g.* (App. 14a – 17a)

Child and family legal issues pervade both federal and state courts. Libby S. Adler, *Federalism and Family*, 8 Colum. J. Gender & L. 197 (1999). State procedure for creating and enforcing judgments is subject to the strictures of due process. *See Mitchum v. Foster*, 407 U.S. 225, 240 (1972). The Magistrate has adjudicated the rights of the Petitioner and the rights of the minor child A.S. behind closed doors. *E.g.* (App. 14a – 17a) Access to the courts is essential where fundamental rights are at stake. Moreover, obstructing the legal means available to litigants to access state tribunals is a violation of the First Amendment.

SCHWIEGERATH V. SCHWIEGERATH IS NOT PENDING BEFORE THIS COURT ON PETITION FOR WRIT OF CERTIORARI

The case on appeal to this Court for Writ of Certiorari is not *Troy Schwiegerath v. Dawna Schwiegerath.* This action is on file with the Colorado Supreme Court as *Troy Schwiegerath v. The Eighteenth Judicial District, The District Court of Douglas County, Beth Elliot-Dumler, Cheryl Lane and Mary Mullarkey.* The case must be decided on its

individual merits and as separate and collateral action. This Court is entitled to verify that *Troy Schwiegerath v. The Eighteenth Judicial District, The District Court of Douglas County, Beth Elliot-Dumler, Cheryl Lane and Mary Mullarkey* is on file docketed as case number 05SA147 with the Colorado Supreme Court.

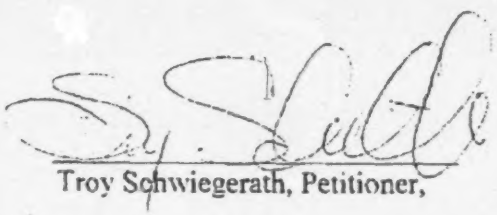
CONCLUSION

For the foregoing reasons, this Court should grant this Petition for Rehearing and issue Writ of Certiorari to the Colorado Supreme Court.

AFFIRMATION

I affirm that this Petition is submitted in good faith and not for the purposes of delay.

Respectfully submitted this 28th day of October, 2005.



Troy Schwiegerath, Petitioner,

(handwritten notations) > DISMISSED –STDT
>DUMLER

GRANTED
Within 10 days for the date of this order, the moving party is directed to furnish a copy of this order to any pro se party who has entered an appearance in this action.

/s/ Beth Elliott-Dumler
District Court Magistrate
Date of order indicated on attachment

DISTRICT COURT DOUGLAS COUNTY, COLORADO Court Address: 4000 Justice Way, Suite 2009 Castle Rock, Colorado 80104	**^ Court Use Only^**
Petitioner: DAWNA L. SCHWIEGERATH **Respondent: TROY SCHWIEGERATH**	Case Number: 02DR477 Div: 3 Ctrm.:

ORDER REGARDING VERIFIED MOTION TO ENFORCE PARENTING TIME PURSUANT TO C.R.S. §14-10-129.5

1. On or about March 15, 2005, Petitioner filed her *Verified Motion to Enforce Parenting Time Pursuant to C.R.S. §14-10-129.5* seeking enforcement of the Court's Orders regarding parenting time, requesting an award of attorneys fees and costs and an order requiring Respondent to pay a fee of $100.00 per

incident for any future non-compliance with the parenting time schedule.

2. On May 3, 2005, this Court entered an *Order re: 1. Petitioner Motion to Enforce Parenting Time 2. Respondent Motion to Correct and Certify Post Decree Adjudication in Accordance with Applicable Law 3. Respondent Motion for Declaratory Relief Pursuant to C.R.C.P. 57 and Notice of constitutional violations 4. Respondent Motion for Release of Elizabeth Holman File 5. Motion to Withdraw by Respondent Attorney.*

3. The Court's Order found that the *Separation Agreement* reflects that the children's primary residence is with the Petitioner and that the *Stipulation Regarding Parental Responsibilities, Parenting Time and Child Related Matters,* reflect that current orders regarding decision making responsibility and parenting time and stand until modified. The *Order* further directed that a forthwith hearing be set on the issue of Alexxy Schwiegerath and the *Motion to Enforce Parenting Time.*

4. A forthwith hearing was set for May 12, 2005, at 2:00 p.m. and notice was provided to Respondent. Respondent failed to appear at the forthwith hearing on May 12, 005.

5. The Court finds that Respondent has not complied with the parenting time schedule regarding Alexxy Schwiegerath, and has violated the Court's Orders.

6. The court Orders, in the best interests of the children, that a civil fine shall be imposed in the amount

$100.00 per incident of non-compliance with the current orders.

7. Since the court's Order on May 3, 2005, Petitioner has been denied her parenting time with Alexxy Schwiegerath, on May 3, 2005, May 4, 2005, May 5, 2005, May 6, 2005, May 7, 205, May 8, 2005, May 9, 2005, May 10, 2005, May 11, 2005 and May 12, 2005. Respondent is fined $100.00 per each incident for a total amount of $1,000.00 Said amount is due and payable to Petitioner as of the date of this Order.

8. For each further date of non-compliance, Respondent shall be assessed a fine of $100.00 per incident of non-compliance with the parenting time schedule.

9. Respondent in next scheduled to have regular parenting time with the parties three daughters, Christian Schwiegerath, Alexxy Schwiegerath and Jetta Schwiegerath from May 14, 2005 through May 18, 2005. Respondent is then schedule to have regular parenting time from June 4, 2005 through June 8, 2005; June 25, 2005 through June 29, 2005; July 16, 2005 through July 20, 2005; August 6, 2005 through August 10, 2005; August 27, 2005 through August 31, 2005; September 17, 2005 through September 21, 2005; October 8, 2005 through October 12, 2005; October 29, 2005 through November 2, 2005; November 19, 2005 through November 23, 2005 and December 10, 2005 through December 14, 2005. The parties have not yet determined how Christmas 2005 will be s hared pursuant to the current order and Respondent's 2006 regular parenting time schedule has not yet been determined. Pursuant to the current orders the children's primary residence is with Petitioner and

they should remain in Petitioner's care except for those times where Respondent is schedule to have regular parenting time or holiday parenting time.

10. Should any of the three children not be returned to Petitioner's care on those dates the children are scheduled to be with Petitioner, law enforcement officials, wherever the minor children may be found, may enter the premises where the children may be found in order to take immediate physical custody of the child and provide said custody to Petitioner.

11. Respondent shall pay for all reasonable attorney fees, costs and expenses associated with this enforcement action. Petitioner's counsel is directed to submit an Attorney Fees Affidavit within fifteen (15) days of the date of the signing of this order and Respondent shall have fifteen (15) days upon receipt of the same to file any objections.

DONE AND SIGNED _____, 2005, nunc pro tunc, May 12, 2005.

BY THE COURT:

_____
DISTRICT COURT JUDGE/MAGISTRATE

Court: CO Douglas County District Court 18th JD
Judge: Beth A Elliott-Dumler
Date: 6/22/05
Case Number: 2002DR477
Case Name: SCHWIEGERATH, DAWNA L AND SCHWIEGERATH, TROY
/s/ Judge Beth A Elliott-Dumler

COURT OF APPEALS **STATE OF COLORADO** Colorado State Judicial Building Two East 14th Avenue Denver, CO 80203 Facsimile: 303-864-4534 Telephone: 303-837-3785	COURT USE ONLY [handwritten notation – 05-1016]
In Re the Marriage of: **Troy Schwiegerath, Appellant,** **and,** **Dawna Schwiegerath, Appellee** **Respondent: TROY SCHWIEGERATH**	Colorado Court of Appeals Douglas County District Court Case Number: 02 DR 477
Pro See Party Troy Schwiegerath 6955 West Polk Avenue Littleton, Colorado 80123 Tel: (303) 933-2154	

PETITION FOR REHEARING

[Official Box Stamps over caption –
GRANTED(crossed out) DENIED(circled)
9-22 2005
(handwritten not.) any further relief should be sought in supreme court
By the Court
(handwritten not.) phlr
Colorado Court of Appeals

COPIES MAILED TO
COUNSEL OF RECORD
To Ct. Judge Tri. Ct. Clerk
AND [handwritten not.] prose
ON [handwritten not.] 9-22-05
BY [handwritten not.] (unintelligible)
COLORADO COURT OF APPEALS]

COMES NOW, THE Apellant, *pro se*, and submits his Petition for Rehearing and states as follows:

1. On August 23, 2005, Judges Casebolt, Webb and Graham adopted Judge Davidson's unilateral attempt to dismiss the above-captioned appeal.

2. C.R.M. 7 (a) is not applicable to the judgment on appeal. *But See*, Order August 23, 2005. Furhter, the record on appeal reflects that the Appellant did contest Magistrate Beth Elliott-Dummer's rulings in a timely manner1.

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1 Citations to the record are not available, as, this court has failed to require the Douglas County District Court's timely transmittal of the same. This Court's expressly prohibit

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COLORADO COURT OF APPEAL September 22, 2005
No. 05CA1016 ORDER DENYING PETITION TO REHEARING

In re the Marriage of

DAWNA L. SCHWIEGERATH,
APPELLEE

and

TROY SCHWIEGERATH,
APPELLANT

Appeal from the DOUGLAS COUNTY Honorable BETH ELLIOTT-DUMLER, MAGISTRATE, judge No. 02DR477

The PETITION FOR REHEARING filed in this appeal by:
TROY SCHWIEGERATH/APPELLANT
is DENIED. CASEBOLT, WEBB, GRAHAM, JJ

Issuance of the Mandate is stayed until: October 24, 2005
If a Petition for Certiorari is timely filed with the Supreme Court of Colorado, then the stay shall remain in effect until disposition of the cause by that Court.

By the Court

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COUNSEL OF RECORD
To Ct. Judge Tri. Ct. Clerk (crossed out)
AND [handwritten not.] prose

ON [handwritten not.] 9-22-05
BY [handwritten not.] (unintelligible)
COLORADO COURT OF APPEALS]

COLORADO COURT OF APPEALS	**ORDER**
No. 05CA1016	Tr. Ct. No. 02DR477

In re the Marriage of
Dawna L. Schwiegerath, Petitioner-Appellee
and
Troy Schwiegerath, Respondent-Appellant

Upon consideration of the response to the court's Order of July 26, 2005, the Court DENIES the petition for rehearing, and the case remains DISMISSED for failure to timely seek review of the magistrate order as required by C.R.M. 7(a).

BY THE COURT:

Casebolt,J.
Webb, J.
Graham, J.

Dated: August 23, 2005

Copies to: Counsel of Record
Clerk of the District Court. Pb/3j

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COUNSEL OF RECORD
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AND [handwritten not.] prose
ON [handwritten not.] 8-23-05
BY ACG
COLORADO COURT OF APPEALS]

COLORADO COURT OF APPEALS	**ORDER**
No. 05CA1016	Tr. Ct. No. 02DR477

In re the Marriage of	
Dawna L. Schwiegerath,	Petitioner-Appellee
and	
Troy Schwiegerath,	Respondent-Appellant

Upon consideration of the objection filed by appellant on July 18, 2005, which the Court construes as a petition for rehearing, the Court DEFERS ruling.

In this case, the magistrate had the authority ot enter the May 3, 2005, order without the parites' consent. See C.R.M. 6(b)(1); People ex rel. Garner v. Garner, 33 P.3d 1239 (Colo. App. 2001). Therefore, appellant must file a motion for review within 15 days of the date of entry and the district court enter an order on that motion as a condition precedent to further appellate review. C.r.M. 7(a)(11) ("Appeal of an order or judgment of a district court magistrate may not be taken to the appellate court unless a timely petition for review has been filed and decided by a reviewing court in accordance with these Rules."); Garner,

supra. "If timely review in the district court is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court. ***Appeal of such district court order or judgment to the appellate court is barred.***" C.R.M. (a)(12) (emphasis added.).

IT IS THEREFORE ORDERED that appellant shall show cause, if any there is, in writing and within 14 days from the date of this order, why the petition for rehearing should not be denied and this appeal should not remain dismissed with prejudice for failure to seek timely review of the magistrate's order in district court. Appellant asserts that he did "object" to the magistrate's order. If so, appellant must provide this Court with a copy of the objection or motion for review, including the date it was filed in the district court, and provide this Court with a copy of the district court's order on review. Failure to file a timely response to this Order shall result in denial of the petition without further notice.

BY THE COURT

Dated: July 26, 2005

Copies to: Counsel of Record & Pro Se pb/sa
District Court

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COUNSEL OF RECORD
To Ct. Tri. Ct. Judge (crossed out) Ct. Clerk (circled)
AND [handwritten not.] prose
ON [handwritten not.] 8-23-05
BY ACG
COLORADO COURT OF APPEALS]

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COLORADO COURT OF APPEALS Two East 14th Avenue, 3RD Floor Denver, CO 80203	
In Re the Marriage of: **DAWNA L. SCHWIEGERATH** **Petitioner-Appellee** **and,** **TROY SCHWIEGERATH** **Respondent-Appellant**	^COURT USE ONLY^ Case Number: 05 CA 1016
Sarah W. Quinlan Fontana & Associates, P.C. Attorneys for Petitioner-Appellee 5941 S. Middlefield Road, Suite 201 Littleton, Colorado 80123 Telephone: (303) 468-2668 Atty. Reg. #: 32426	
MOTION TO DIMSISS WITH PREJUDICE	

[Official Box Stamps over caption –
GRANTED(circled) DENIED(crossed out)
7-7. 2005
(handwritten not.) Having received no response, Court Dismisses the appeal.
By the Court
(handwritten not.) Davidson CJ pb/sa
Colorado Court of Appeals

COPIES MAILED TO

COUNSEL OF RECORD
To Tri. Ct. Judge (crossed out) Ct. Clerk(circled)
AND [handwritten not.] prose
ON [handwritten not.] 7-7-05
BY ACG
COLORADO COURT OF APPEALS]

The Petitioner-Appellee, Dawna L. Schwiegerath, by and through her attorney of record, Sarah W. Quinlan of Fontana & Associates, P.C. hereby requests that Respondent-Appellant's appeal be dismissed with prejudice and in support thereof states as follows:

1. On May 3, 2005, Magistrate Eliot-Dumler of the Douglas County District Court, entered an Order entitled Order re: 1. Petitioner Motion to Enforce Parenting Time 2. Respondent Motion to Correct and Certify Post Decree Adjudication in Accordance with Applicable Law 3. Respondent Motion for Declaratory Relief Pursuant to C.R.C.P. 57 and Notice of Constitutional Violations 4. Respondent Motion for Release of Elizabeth Holman File 5. Motion to Withdraw by Respondent Attorney.

DISTRICT COURT **DOUGLAS COUNTY, COLORADO** 4000 Justice Way, Sute 2009 Castle Rock, Colorado 80104	
In Re the Marriage of: **Petitioner: DAWNA L. SCHWIEGERATH** **and,**	^COURT USE ONLY^ Case Number: 02 DR 477 Div.: 3 Ctrm.:

Respondent: TROY SCHWIEGERATH	
Sarah W. Quinlan Fontana & Associates, P.C. 5941 S. Middlefield Road, Suite 201 Littleton, Colorado 80123 Telephone: (303) 468-2668 Atty. Reg. #: 32426	
VERIFIED MOTION FOR ENTRY OF JUDGMENT	

The Petitioner, Dawna L. Schwiegerath, by and through her attorney of record, Sarah W. Quinlan of Fontana & Associates, P.C., requests that this court to enter judgment in favor of Petitioner and against respondent and in support thereof states:

1. On June 22, 2005, *nunc pro tunc*, May 12, 2005, this court entered an *Order Regarding Verified Motion to Enforce Parenting Time Pursuant to C.R.S. §14-10-129.5*, which is attached hereto and incorporated herein as Exhibit A.

2. The *Order Regarding Verified Motion to Enforce Parenting time Pursuant to C.R.S. §14-10-129.5*, provides, in paragraph 6, "The Court Orders, in the best interests of the children, that a civil fine shall be imposed in the amount of $100.00 per incident of non-compliance with the current orders."

3. In paragraph 7, the *Order* states "Since the Court's Order on May 3, 2005, Petitioner has been denied her parenting time with Alexxy Schwiegerath, on May 3, 2005, May 4, 2005, May 5, 2005. May 6, 2005, May

7, 2005, May 8, 2005, May 9, 2005, May 10, 2005, May 11, 2005 and May 12, 2005. Respondent is fined $100.00 per incident for a total amount of $1,000.00. Said amount is due and payable to Petitioner as of the date of this Order."

4. Respondent has failed to pay the Court Ordered $1,000.00 to Petitioner. Petitioner submits that judgment should be entered for $1,000.00 against Respondent.

5. IN paragraph 8, the *Order* states "For each future date of non-compliance, Respondent shall be assessed a fine of $100.00 per incident of non-compliance with the parenting time Schedule.

6. Petitioner submits that Respondent denied Petitioner her scheduled parenting time with Alexxy Schwiegerath on May 12, 2005, May 19, 2005, May 20, 2005, May 21, 2005, May 22, 2005, May 23, 2005, May 24, 2005, May 25, 2005, May 26, 2005, May 27, 2005, May 28, 2005, May 29, 2005, May 30, 2005, May 31, 2005, June 1, 2005, June 3, 2005, June 9, 2005, June 10, 2005, June 11, 2005, June 12, 2005, June 13, 2005, June 14, 2005, June 15, 2005, June 16, 2005, June 17, 2005, June 18, 2005, June 19, 2005, June 20, 2005, June 21, 2005 and June 22, 2005. This amounts to thirty-one (31) additional days which pursuant to the Court's *Order*, Respondent must be fined $100.00 per incident for his non-compliance.

7. Petitioner submits that judgment should be entered for $3,100.00 against Respondent for his thirty-one additional days of non-compliance.

8. On September 12, 2005, Petitioner requested via e-mail payment of 44,100.00. A copy of the Spetember

13, 2005, e-mail is attached hereto and incorporated herein as Exhibit B.

9. Respondent has not paid Petitioner any money towards the $4,100.00

10. Petitioner is entitled to entry of judgment in Petitioner's favor against Respondent, in the principal amount of $4,100.00, with interest accruing from the date of judgment at the rate of eight percent (8%) per annum.

11. Petitioner has incurred attorney fees and costs due to Respondent's failure to comply with the Court orders and request that said fees and costs be assessed against Respondent.

WHEREFORE, Petitioner respectfully request this Honorable Court enter judgment against the Respondent; to award attorney fees and costs associated with the bringing of this motion; and for such other and further relief as the Court deems just and proper.

DATED: October 3, 2005

Respectfully submitted,

FONTANA &
ASSOCIATES, P.C.

/s/

Sarah W. Quinlan (#32426)

VERIFICATION

STATE OF COLORADO)
)s
County of Arapahoe)

I, Dawna L. Schwiegerath, being first duly sworn upon oath, states that I am the above Petitioner, have read the *Verified Motion for Entry of Judgment*, know the contents thereof to be true and correct to the best of my knowledge, information and belief.

/s/

Dawna L. Schwiegerath

Subscribed and sworn to before me on October 3, 2005, by Dawna L. Schweigerath.

Witness my hand and official seal.
[official notary seal]

(Signature unintelligible)

Notary Public
My commission expires: 3-10-08

CERTIFICATE OF MAILING

I certify that on October 3, 2005, a true and correct copy of the *Verified Motion for Entry of Judgment*, was deposited into the United States Mail, postage prepaid, properly addressed as follows:

Troy Schwiegerath
6955 W. Polk Avenue
Littleton, Colorado 80123

(signature unintelligible)

E-mails:

From: Dawna Lynn
schwiegerath<dawnalynn0307@comcast.net>
To: TROY SCHWIEGERATH<dfdisme_01@msn.com>
cc.: "Antoinette Grubb" <agrubb@fontanafamilylaw.com>
Sent: Tuesday, September 13, 2005 5:08 PM
Subject: Money stuff .....

September 15, 2005.

I am writing to you in regards to the judgment made on or about May 3, 2005. This ruling stated that each day you continued to deny my parenting time with Alexxy, you would have to pay the sum of $100 to me for not complying with Court Orders.

The total days you defied Court Orders were 41 days ... May 3rd through May 13, June 19th through July 3rd, and July 9th through June 22 of 2005. This is a total of $4,100.00 that you owe. I am attempting one more time to collect the money you owe me for these days. Over five months have passed and I feel that you are continuing to ignore the Court Orders. There are also Attorney's fees that you owe as well. Pease pay the amount you owe, within the next ten days from the date of this email, so we can put this all behind us and start a new day.

Thanks,

Dawna Schweigerth

(signed)

From: "Dawna Lynn schwiegerath"
To: "TROY SCHWIEGERATH"

Date: Thu, 7 Jul 2005 21:34:23 -0600

Thank you for dropping off that stuff to my Lawyer.
You didn't however, drop off the one document that states Alexxy's
declaration of independence .....
Can you please bring that one and any other ones that might be missing to
my Lawyer?
Also, since we are BOTH supposed to follow the CURRENT court orders------
until they are changed--
Makes it an issue for your parenting time this weekend.....Even though
we have some of the documentation for your NEW kelly day, we still need to
file it with the court system to make it official.
Which causes a problem.....I WILL NOT VIOLATE COURT ORDERS.....

So, what we can do for now, until the orders are changed is:
Use your Vacation time.....If this is acceptable to you, just write me
back stating that this Saturday-Weds will be 5 days of vacation time that
you are entitled to.....
Otherwise, we will have to wait for the orders to change.....
If I don't hear back from you, I will assume that until the orders are
changed, we will both be abiding to them.....
Thanks

p.s. What do you think that E. Holeman and Magistrate Dumbler did to you ?
Do you not understand that these people are honest educated

people? Just
like Judith Silver. These people have more integrity and education than
you can imagine.....Why do you proceed? They are good people that
are striving for justice.....
JUST LIKE YOU,-
don't you try your hardest to do what's right---and protect people?
HONESTLY, If I were you? I would immediately re-think all of the silly
charges you've brought fourth---- before YOU or your wife in any more
trouble.
There are MANY other educated (and well respected) people that have been on
this case since it began.
You need to realize that these people are only protecting us.....

Do You Yahoo!?
Tired of spam? Yahoo! Mail has the best spam protection around
http://mail.yahoo.com

From: Dawna Lynn schwiegerath<mailto:dawnalynn0307@comcast.net>
To: TROY SCHWIEGERATH<mailto:dfdisme_01@msn.com>
Sent: Wednesday, July 06, 2005 3:52 PM
Subject: kelly day/court order

My Lawyer is drafting a letter to you regarding Kelly day change. I need you to get something to her in writing from the fire dept. a.s.a.p. I know you agreed with the dates over our e-mails, but I don't want to be in violation of the CURRENT court order. Please understand that we have to follow them until the court changes them...
If we hurry and get something in writing in the next two days--from you and denver fire --
I'm hopeful that we can still make this coming week work out.

Sell on Yahoo! Auctions - no fees. Bid on great items.
http://auctions.yahoo.com/

CERTIFICATE OF SERVICE

This is certify that I, Troy Schwiegerath, *pro se*, have duly served the within **MOTION FOR ISSUE OF WRIT OF PROHIBITION TO ANGELA ARKIN AND BETH ELLIOTT-DUMLER AND PETITION FOR REHEARING,** upon all parties herein by depositing the same in the United States mail, postage prepaid, at Denver, Colorado this 28th day of October, 2005 addressed as follows:

Colorado Supreme Court
Chief Justice: Mary J. Mullarkey
Colorado Court of Appeals
Judges: Janice B. Davidson, James A. Casebolt,
Dennis Graham & John R. Webb
Two East 14th Avenue
Denver, CO 80203

Douglas County District Court
Div. 3: Judge Angela Arkin Magistrate & Beth Elliott-Dumler
Clerk Cheryl Lane
4000 Justice Way, Ste. 2009
Castle Rock, CO 80104

Elizabeth Holman
1191 S. Parker Road, Ste. 100
Denver, CO 80231

Frances Fontana Esq.
Fontana and Associates. P.C.
5941 Manfield Rd., Ste. 201
Littleton, CO 80213

State of Colorado)
)ss
City and County of Denver)

Subscribed and sworn to me this 28th day of October, 2005, by Troy Schwiegerath. Witness my hand and official seal.

Troy Schwiegerath, Petitioner,
Pro Se
6955 W. Polk Ave.
Littleton, CO 80123

Notary Public

My Commission expires _____.